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Points in Canon Law

(CLAIMED TO BE)

OPPOSED

TO SOME OF

REV. DR. SMITH'S VIEWS

OF

ECCLESIASTICAL LAW,

AS NOW APPLIED TO THE

UNITED STATES OF AMERICA.

A reproduction of a series of articles contributed to THE CATHOLIC UNIVERSE, Newspaper, of Cleveland, Ohio,

BY

REV. P. F. QUIGLEY, D. D.,

Professor of Canon Law, etc., in St. Mary's Seminary, Cleveland, Ohio.

CLEVELAND, OHIO:
M. E. McCABE,
CATHOLIC UNIVERSE PRINTING HOUSE, 117 ERIE STREET.
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1878.

NIHIL OBSTAT.

T. F. MAHAR, D. D.,

Censor Deputatus.

APPROBATION

OF THE RT. REV. BISHOP OF CLEVELAND.

IMPRIMATUR.

† R. GILMOUR,

Episcopus Clevelandensis.

Datum Clevelandensis,

Festo SS. Petri et Pauli, 1878.

RESPECTFULLY DEDICATED

TO

MY REVEREND COLLEAGUES

IN THE

UNITED STATES OF AMERICA.

The subject of Ecclesiastical Law in the United States is one of momentous importance to the Catholic clergy of this country, and from day to day necessarily will increase in interest for all of us. To mention no higher interest, it is likely to be for many of us, from time to time, a case where *ignoratio legis non excusat.*

The Reverend Dr. Smith of Rahway, in the Diocese of Newark, has rendered us all a service by calling attention to the subject in his recently published *Elements of Ecclesiastical Law.* While we must all feel grateful for those of his labors which set before us correct expositions of the law, it is of the greatest importance for us to be sure that all of his expositions are strictly correct. An eminent friend thought there were errors in the *Elements*, and earnestly asked me to examine and criticise them. In looking through them I found several propositions advanced which I considered at variance with established authority. I have undertaken, in my feeble way, to call attention to some of those statements, and to give my reasons for dissenting from them.

My observations were originally contributed in a series of articles to *The Catholic Universe*; and now, at the request of several eminent friends, they are republished in pamphlet form, so as to bring them more conveniently to your notice. I hope you may deem them worthy of your consideration, and if any of my criticisms can be shown to be unfounded, I hope some of you will kindly take the trouble to further enlighten us all.

This is in no sense a subject of controversy in the ordinary acceptation of the word ; it is a matter for serious effort, not to sustain a theory, but to ascertain the law. It is in that spirit these remarks are submitted, and I will feel amply repaid for the labor bestowed in presenting them if they conduce to that end, either by being accepted as correct, or by inducing some able Canonist to favor us with his superior efforts, or finally by becoming matter of an authoritative decision.

If in any of these essays there appear at times remarks which seem to be controversial rather than philosophical, I regret it, and (without pleading what at the time of writing seemed to me justification for a newspaper article), I ask that they may now be lost sight of, in the graver consideration of the main questions involved.

I also have the honor of inviting attention to the Decree *de Matrimoniis Clandestinis*, which was sent by the Holy See to New Orleans more than fifty years ago, but thus far has never been given, in full, to the public in any book or pamphlet.

I avail myself of this opportunity to tender my thanks to Rt. Rev. Dr. Gilmour, our illustrious Bishop, for deigning to approve my articles; and to the Most Rev'd and the Rt. Rev'd Prelates who graciously favored me with their valuable letters, herewith given to the public; to my Reverend friend Dr. Mahar, for his kindness in performing the duties of *censor deputatus*; as also to my esteemed friend Dom Pedro Manly Tello, the distinguished editor of our most excellent journal, THE CATHOLIC UNIVERSE, for many acts of kindness in publishing these articles.

Most respectfully,

THE AUTHOR.

Month of the Sacred Heart, 1878,
St. Mary's Seminary, Cleveland, O.

Approbation of Rt. Rev. Richard Gilmour, D. D., Bishop of Cleveland.

EPISCOPAL RESIDENCE, CLEVELAND, June 24, 1878.

REV. P. F. QUIGLEY, D. D.

REV. DEAR SIR:

I regard your criticisms on Rev. Dr. Smith's *Elements of Ecclesiastical Law* as a valuable acquisition to our ecclesiastical literature. They will excite thought and sharpen lines which in the long run will end in something definite.

There may be a difference of opinion as to the exact character of the approbation given by the Holy See to the late Council of Baltimore, but there can be no difference of opinion as to the necessity of clearly understanding the binding force of those Decrees.

Your little work will greatly help to this end, and so I most willingly give it the necessary imprimatur.

Yours sincerely in Xto.,

† R. GILMOUR,
Bishop of Cleveland.

Commendation from Most Rev. J. B. Purcell, D. D., Archbishop of Cincinnati.

CINCINNATI, July 20, 1878.

REVEREND DEAR DOCTOR:

You have the inner track of Rev. Dr. Smith. I know his book only by your most just and learned strictures.

Yours Sincerely,

† J. B. PURCELL,
Archbishop of Cincinnati.

REV. DR. QUIGLEY.

Commendation from Most Rev. Napoleon J. Perché, D. D., Archbishop of New Orleans.

ST. CHARLES COLLEGE, GRAND COTEAU, LA., July 27, 1878.

REV. DEAR SIR:

His Grace the Archbishop of New Orleans, is now actually visiting his vast Diocese, giving Confirmation, and is so much oppressed and fatigued that he is unable to write you personally. But I am directed by his Grace to inform you that he will be very much pleased to see your articles against Dr. Smith's *Elements of Ecclesiastical Law* published in pamphlet form.

With sentiments of most sincere affection in Christ,

Your very devoted,

E. M. TRAIN,
Private Secretary.

REV. DR. QUIGLEY, CLEVELAND, O.

Commendation from Rt. Rev. Eugene O'Connell, D. D., Bishop of Grass Valley.

WEAVERVILLE, TRINITY COUNTY, CAL., June 27, 1878.

MY DEAR DOCTOR QUIGLEY:

Your strictures on Dr. Smith's *Elements of Ecclesiastical Law* which appeared in the CATHOLIC UNIVERSE, struck me so forcibly, your arguments seemed to me so convincing, that I long to see them in pamphlet form. How any canonist can gainsay them "I'm weary of conjecture." Fearing lest your strictures might not appear in pamphlet form I took the precaution to clip them from the columns of

the *Universe*. But I am not so selfish as to wish your arguments hidden under a bushel. On the contrary, I would fain they were published for the benefit of all the clergy in the United States. May I then request of you, dear Doctor Quigley, to have them published in pamphlet form? *Scire tuum nihil est*, says Persius, *nisi te scire hoc sciat alter*. And in a certain sense the poet is quite right.

Let me assure you that until the appearance of your strictures on Dr. Smith's *Elements*, certain theologians were not aware of the obligation in California (Alta) of receiving the Paschal Communion in one's own Parish! You have clearly demonstrated that this obligation is not limited to some (quædam Paræciæ) Parishes, but extends to all throughout California; and that not merely the State, but the Ecclesiastical Province of California—including Nevada—comes under the obligation. The Decrees of our First Provincial Council, approved by the Holy See and quoted by you, clearly prove the obligation of the faithful to receive Paschal Communion in their respective Parishes.

How many, too, would long to see the Decree *De Matrimoniis Clandestinis*, Feria V. 9° Septembris, 1824, which you have done me the favor of sending me. This important Decree or Instruction to the Bishop of the Diocese of New Orleans, has not, I understand, appeared in any book or pamphlet! Will you not also include it in the pamphlet containing your strictures and thus oblige not only me, but many more of your clerical friends.

Wishing you length of days here and eternal happiness hereafter, I remain, dear Doctor Quigley,

Your obliged servant in Christ,

† E. O'CONNELL,

REV. P. F. QUIGLEY, D. D., CLEVELAND, O. Vallisprat.

Commendation from Rt. Rev. S. V. Ryan, D. D., C. M., Bishop of Buffalo.

BUFFALO, July 31, 1878.

DEAR DR. QUIGLEY:

In regard to your pamphlet, the advance sheets of which you have been kind enough to send me, I can only say that I am pleased to see the articles, which I read with interest in the *Catholic Universe*, now put before the public in a more permanent form, and your own worthy Bishop approving your little work as "a valuable acquisition to our ecclesiastical literature."

I recommend you not to delay its publication.

Very Respectfully Yours, etc.,

† S. V. RYAN,

Bishop of Buffalo.

Commendation from Rt. Rev. Alexius Edelbrock, O. S. B., Abbot, St. Louis on the Lake.

ABBEY OF ST. LOUIS ON THE LAKE, ST. JOSEPH P. O.,
Stearns County, Minn., July 21, 1878.

REV. DEAR DOCTOR:

Accept my sincere thanks for your valuable treatise, POINTS IN CANON LAW. This important little work is very opportune. It bears no marks of superficial reading, or of an indigestible quantum; but it is clear, logical, and erudite. You do not merely *say*, but *prove* as you go along.

I am, in the Sacred Hearts of Jesus and Mary,

Yours Very Respectfully,

ALEXIUS EDELBROCK, O. S. B.,

REV. P. F. QUIGLEY, D. D., CLEVELAND, O. Abbot.

Commendation from Rt. Rev. Francis X. Leray, D. D. Bishop of Natchitoches.

NATCHITOCHES. July 29, 1878.

REV. DEAR FATHER:

The reading of your pamphlet has afforded me great satisfaction. I rejoice to see questions of ecclesiastical law, as now applied to the church in the United States of America, brought before the public and discussed by competent men, in the hope that such efforts will hasten the day when Canon Law will be the rule in this country, for the greater security of priests and for the additional strength it would give to Episcopal authority based upon well known and well defined laws.

Yours Faithfully in Xto.

FRANCIS X. LERAY,

REV. P. F. QUIGLEY, D. D. Bishop of Natchitoches.

Commendation from Rt. Rev. Joseph Dwenger, D. D., Bishop of Fort Wayne.

FORT WAYNE, INDIANA, July 20, 1878.

REV. DEAR FRIEND:

I think that your little work, POINTS IN CANON LAW, is very opportune, and that it will serve a very useful purpose.

Very Sincerely,

† JOSEPH DWENGER,

REV. DR. QUIGLEY, CLEVELAND. Bishop of Fort Wayne.

Commendation from Rt. Rev. A. M. A. Blanchet, D. D. Bishop of Nesqually.

VANCOUVER, W. T., August 5, 1878.

REV. P. F. QUIGLEY, D. D.

REV. SIR:

I have received the advance sheets of your pamphlet on Ecclesiastical Law in the United States, for the publication of which you wish to have my opinion.

In answer I would say that all that contributes to ascertain the true and correct exposition of Ecclesiastical Law in this country ought to be appreciated and welcome. Therefore I heartily approve of your proposed publication.

* * * * * * * * * * * * * * * *

Yours Truly,

† AUGUSTINE M. A.

Bishop of Nesqually.

Commendation of Very Rev. James A. Corcoran, D.D. the American Theologian of the Vatican Council.

ST. CHARLES SEMINARY, OVERBROOK, PA., Aug. 7, 1878.

REV. DEAR DOCTOR:

I have read your pamphlet, though not yet with sufficient care and study to pronounce fully on its merits.

Controversy of this kind, when properly carried on without personalties or rancour, is very useful in eliciting the truth, and I think every writer, whose only purpose is to discover or illustrate the truth, should be glad to have his book weighed in the *trutina* of criticism that is candid, impartial and aiming at truth as its only object.

Amongst other things, I was very much pleased with what you say of the *Confirmation* of the Second Plenary Council of Baltimore, and of the law of the Index as to its binding character in this country. Believe me,

Yours Truly in Xto.,

JAS. A. CORCORAN.

Commendation from Honorable Edmund F. Dunne, Ex Chief Justice of Arizona.

LAW OFFICE EDMUND F. DUNNE, WASATCH BUILDING,
SALT LAKE CITY, UTAH, U. S. A., Aug. 5, 1878.

MY DEAR COUSIN:

Points in Canon Law received, and read with interest. I supposed it would treat of matters none but a canonist could understand, but I find it to be, among other things, a very interesting "brief" on the construction of statutes, enjoyable, I think, as much by a civil lawyer, or any one who can follow an argument, as by a canonist. Unless the author of the *Elements* can successfully impeach your authorities I would expect judgment against him in the points raised. Given the law as cited, and the authorities quoted, your conclusions seem inevitable.

Ever Yours,

EDMUND F. DUNNE.

REV. P. F. QUIGLEY, D. D., CLEVELAND, OHIO.

Commendation of Rt. Rev. Francis Mora, D. D., Bishop of Montery and Los Angeles.

LOS ANGELES, CALIFORNIA, Sept. 9, 1878.

REVEREND AND DEAR SIR:

I have received the POINTS IN CANON LAW which you had the kindness to send me. I have read them carefully, and recommend them to the perusal of the clergy of my Diocese.

Yours in Christ,

† FRANCIS MORA,
Bishop of Montery and Los Angeles.

REV. P. F. QUIGLEY, D. D.

Commendation from the Jesuit Fathers of Woodstock College.

COLLEGE OF THE SACRED HEART OF JESUS,
WOODSTOCK, HOWARD CO., MD., Oct. 11, 1878.

REV. DEAR FATHER QUIGLEY:

I have read the advance sheets of POINTS IN CANON LAW. I highly approve of what you have written. The doctrine is sound and true. I am very much pleased to learn that it will be published in pamphlet form for the benefit of the clergy of the United States.

Yours Respectfully in Xto.,
FR. CHARLES PICCIVILLO, S. J.,
Prefect of Studies at Woodstock College.

THE CONFIRMATION
OF THE
SECOND PLENARY COUNCIL OF BALTIMORE.

FIRST ARTICLE.

EDITOR UNIVERSE:

I respectfully ask the use of the columns of THE CATHOLIC UNIVERSE to criticise some faulty points in the *Elements of Ecclesiastical Law*, a work recently from the pen of Rev. Dr. Smith.

I believe the prevailing opinion in the United States is that we are fast approaching that ecclesiastical status, in which the study of Canon Law is of the utmost importance. I think, therefore, that every act which tends to prepare minds in this country for such a change is deserving of praise and encouragement. At the same time the consequences of false teaching in this department are so disastrous that one need offer no apology for attempting to correct it.

Rev. Dr. Smith has obtained from Cardinal McCloskey, in whose Diocese the *Elements* were published, the *imprimatur*. This I duly reverence. Yet it does not deter me from criticising the work, for I feel sure His Eminence never intended his *imprimatur* to preclude just, fair, and kind criticism. *Plato mihi amicus, magis autem amica veritas.*

I. Rev. Dr. Smith, in his *Elements of Ecclesiastical Law*, pages 74 et seq., so interprets Canonists as to teach that the Roman documents confirming the Second Plenary Council of Baltimore contain only the *confirmatio in forma communi, seu ordinaria*, and therefore the Baltimore Decrees, he concludes, are not confirmed *confirmatione in forma specifica, seu ex certa scientia data.* As a consequence of this, he teaches, page 74, that:

"It is allowed to appeal to the Propaganda from the Decrees of the Second Plenary Council of Baltimore."

This is a question of the highest importance to all, as it decides whether or not the Baltimore Decrees are, for this country, a common standard of action according to which Bishops may rule with certitude as to whether Rome will sustain their rulings. If Dr. Smith's teaching be correct, it is certain that priests have a right to appeal to Rome against all decisions of Bishops founded upon the Baltimore Decrees; the Decrees are no permanent standard of action for our Bishops, and may not be accepted at Rome as reason against reversing the rulings of Bishops. If Dr. Smith's teaching be incorrect, the decisions of Bishops, when ruling according to the Baltimore Decrees, will be sustained by Rome; the hope of obtaining a reversal of judgment is futile and

absurd; and priests appealing against such rulings of Bishops are deceived as to their rights, and the rights of Bishops, and may expect only a disastrous condemnation.

These two teachings are essentially opposed to each other; they are incompatible; they demand different forms of government, for the enforcement of the one necessarily destroys the existence of the other. The latter is the one we must hold.

The Roman documents confirming the Baltimore Decrees, when interpreted in the light of the correct teaching of Canon Law, evidently contain the *confirmatio in forma specifica, seu ex certa scientia data*, and show that Dr. Smith's teaching on this question is false and untenable.

I will give the law, produce the Roman documents and make the application.

What does the law say?

Suarez says, conformation is *ex certa scientia* when it is made: "With a complete "knowledge of the matter (of the Council) and of all its circumstances." (1).

"When the confirmation itself contains such words as show sufficiently that "it was preceded by an examination, or by full knowledge of the matter "confirmed." (2).

The same author further says the signs by which we may know that the confirmation was made with full knowledge of the matter confirmed are:

"If in the instrument of confirmation the whole tenor or text (of the Coun- "cil) be inserted:" (3).

"If the phrase *ex certa scientia* be expressly used:" (4).

"If a clause equivalent to *ex certa scientia* be used. It is not necessary, for "the confirmation to be specific, that the formal words *ex certa scientia* "be found in the rescript; but it suffices that from other words of the rescript, "or from things therein recounted, it appear that the Pope acted with full "knowledge (of the Council confirmed)." (5)

Suarez teaches that the confirmation is made *in forma communi*:

1. "When it contains nothing sufficient to show that the confirmation was "made with full knowledge (of the matter confirmed):" (6)

2. "When it is a pure and simple confirmation made without knowledge "(of the decrees), with only a confused or indistinct knowledge, or without "any examination:" (7)

(1). Cum notitia perfecta rei et omnium circumstantiarum illius.—SUAREZ, Vives, Paris Edition, 1856, vol. 6, p. 294.

(2). Quando in ipsa confirmatione adduntur verba aliqua quibus sufficienter significatur præcessisse examen seu cognitionem perfectam.—SUAREZ. l. c.

(3). Si in instrumento confirmationis inseratur totus tenor (concilii):—SUAREZ. l. c. pp. 294 and 295.

(4). Si expresse dicatur *ex certa scientia*.—SUAREZ. l. c. p. 295.

(5). Clausa æquipollens illi, *ex certa scientia*. Non sunt necessaria in rescripto formalia verba *ex certa scientia* ut [confirmatio] censeatur esse ex certa scientia; . . . . . sed sufficere quod ex aliis verbis ejusdem rescripti, seu ex narratis in illo constet principem [Papam] cum plena facti cognitione processisse.—SUAREZ. l. c.

(6). Quando in ea nullum signum sufficiens additur ex quo constat confirmationem processisse habita plena notitia (concilii).—SUAREZ. l. c.

(7). Quando est pura et simplex confirmatio sine cognitione (decretorum) facta . . . cum sola cognitione confusa, sine ullo examine, vel distinctiori notitia (concilii):—SUAREZ. l. c.

3. "When the tenor or text (of the Council) is not inserted (in the confir-
"mation):" (8)

4. "When it lacks every quality sufficient to show that the confirmation
"was made *ex certa scientia.*" (9)

The eminent canonist Reiffenstuel says:

"Confirmation *in forma communi*, which is also called simple or ordinary
"confirmation, is that by which the superior approves of the act of his infe-
"riors, leaving said act in the same state (as to truth, justice and wisdom) as
"it was before being confirmed." (10)

"Confirmation is made in *forma speciali seu ex certa scientia* when the tenor
"or text of the whole (Council or) instrument is inserted in the confimation;
"when the clause *ex certa scientia* is used: When words equivalent to *ex certa*
"*scientia* are used." (11).

Schmalzgrueber, whom Ballerini has called facile princeps canonistarum, says:

"Confirmation is made in *forma communi* when the prince, or other superior
"having power to confirm, without any knowledge, or without an exact
"knowledge of the cause, and therefore not fully, or only confusedly in-
"structed as to the cause, confirms an act done by an inferior for what it is
"worth." (12).

"But the confirmation is special, or *ex certa scientia* when he confirms the
"act of an inferior, after having considered and examined all the circum-
"stances and qualities of the cause, and hence has full and perfect know-
"ledge of it." (13).

"The signs by which we may know that a confirmation was given *in forma*
"*specifica*, are:

"If in the instrument or rescript of confirmation there be inserted the
"whole tenor or text of the act which is confirmed, because then it is evi-
"dent that the superior had full and certain knowledge of the cause and
"wished to confirm the act and make it of force." (14).

(8). Quando tenor (concilii) non inseritur (in confirmatione):—SUAREZ. l. c.

(9). Quando caruerit omni proprietate sufficiente ad hoc ut confirmatio sit *ex certa scientia*:—SUAREZ. l.c.

(10). Confirmatio in forma communi (quæ et confirmatio simplex, atquæ ordinaria appellatur) ea est qua superior non præcedente alia cognatione causæ, actum ab inferioribus gestum confirmat in eo statu, in quo prius erat.—Reiffenstuel. Jus Canonicum, Vives, Paris Edition, 1866, vol. 3, Bk. 2, last Tit. p. 359.

(11). Confirmatio facta est in forma speciali, et non tantum communi, si tenor totius priviligii, aut instrumenti inseritur ipsi confirmationi; vel saltem apponitur clausula "ex certa scientia,".....aut si confirmatio fiat per verba æquipollentia.—REIFFENSTUEL. l. c. p. 360.

(12). Confirmatio in forma communi fit quando princeps, vel alius superior potestatem confirmandi habens, nulla, vel non exacta, causæ cognitione præmissa, adeoque de negotio non plene, sed confuse tantum instructus, actum ab inferiore gestum confirmat in eo statu in quo antea fuit.—Schmalzgrueber, Jus Ecclesiasticum, vol. 4, Edition Rome, 1844, Par. 3, Tit. 30, p. 551.

(13). Confirmatio autem in forma speciali seu ex certa scientia quando actum ab inferiore gestum confirmat, pensatis et examinatis totius negotii circumstantiis et qualitatibus, adeoque cum perfecta ejus notitia.....—SCHMALZGRUEBER. l. c.

Signa ex quibus colligatur confirmationem factam in forma speciali sunt:

(14). Si in instrumento, seu rescripto confirmationis inseratur totus tenor dispositionis, vel actus, qui confirmatur.....quia tunc constat principem sufficientem rei notitiam, et scientiam habuisse, ideoque.....voluisse actum confirmare, et firmum validumque reddere.....—SCHMALZGRUEBER. l. c. pp. 552 and 553.

"If, in the rescript or letters of confirmation, there be expressly used the "clause *ex certa scientia*, and this holds even if the text which is confirmed "be not inserted in the letters of confirmation." (15).

"If the confirmation be made by words equivalent to the clause *ex certa* "*scientia*." (16).

"If from other words in the rescript confirmatory, or from what is therein "stated, it appear that the superior confirmed the act with full knowledge "of the cause." (17).

From this teaching it is evident that the confirmation of a Council is specific, or *ex certa scientia data*, when it is made WITH FULL KNOWLEDGE OF THE DECREES CONFIRMED.

The proof that such knowledge was had, is:

1st. If the whole text of the Council or decrees be inserted in the confirmation.

2ndly. If an examination of the Decrees were made prior to confirmation.

3dly. If the words *ex certa scientia* be used.

4thly. If the rescript confirming contain other words of equal tenor so as to show that the one confirming had full knowledge of the decrees confirmed.

The confirmation is *in forma communi* when all of these marks are wanting.

What do the Roman documents say?

In examining the Roman documents which confirm the Second Plenary Council of Baltimore, I find that they clearly contain the marks of the *Confirmatio specifica, seu ex certa scientia data.*

Of the many Roman documents sent to the Baltimore Fathers, three speak of the confirmation, viz.: The Apostolic Letter of the Holy Father, dated Sept. 2d, 1867; the letter from the Congregation of the Propaganda, dated January 24th, 1868, and an *Instructio* from the same Congregation, of the same date.

The Pope says: "Concerning the Acts of the Council, which, on account "of your most laudable regard for Us and for the Holy See, you have gladly "submitted, according to ancient usage, to Our supreme judgment, and to the "judgment of the Apostolic See, you will receive a suitable answer from Our "Congregation charged with the Propagation of the Faith." (18).

The Decree of the Propaganda reads:

"The Sacred Congregation of the Propagation of the Faith in general "sessions held on the 16th, 23d and 27th of September, in the year 1867,

(15). Si in rescripto sive litteris confirmationis expresse adjecta sit clausula "ex certa scientia;" proceditque hoc etsi tenor dispositionis vel actus qui confirmatur, litteris illis non sit insertus—SCHMALZGRUEBER. l. c.

(16). Si confirmatio fiat per verba quæ clausulæ "ex certa scientia" æquipollent.—SCHMALZGRUEBER. l. c.

(17). Si ex alliis verbis rescripti confirmatorii vel ex narratis in illo constet, principem cum plena causæ cognitione dispositionem vel actum confirmasse.—SCHMALZGRUEBER. l. c.

(18). Quod autem attinet ad Acta memorati Concilii a Vobis concelebrati, quæ ex more majorum supremo nostro, et hujus Apostolicæ sedis judicio, pro eximia vestra erga Nos et Eandem Sedem observantia summis laudibus digna, subjicere gloriati estis, congruum de iisdem Actis a Nostra Congregatione Fidei Propagandæ præposita accipietis responsum.—Acta et Decreta Con. Plen. Balt. II. p. CXXXV.

"considered in a careful examination the Acts and Decrees of the same "(Second Plenary) Council, and, excepting some corrections and observations "which said Congregation ordered to be sent in the enclosed letter to the "Apostolic Delegate, most willingly acknowledged (or discerned) that said "Acts and Decrees should be inviolably observed by all whom they concern."

"When in an audience, had on the 6th of October, said year, the under- "signed Secretary of the same Sacred Congregation, reported this decision "to our most Holy Lord, HIS HOLINESS APPROVED of it in all its parts, and "COMMANDED the expedition of this Decree to this effect." (19).

The third document, the *Instructio* of the Propaganda, dated the 24th January, 1868, reads:

"In general sessions held on the 16th, 23d and 27th of September, of last "year, the Sacred Congregation for the Propagation of the Christian Name, "most accurately examined the Acts and Decrees of the Second Plenary "Council of Baltimore, held in the month of October, 1866, and, with cer- "tain exceptions given in this letter, fully confirmed the whole text of the "Council, having previously obtained the sanction of our most Holy Lord, "as Your Grace will understand from the Decree forwarded." (20).

In other words the Roman documents show:

1st. That the Fathers of the Second Plenary Council of Baltimore submitted their *Acta et Decreta* for the judgment of the Holy See, or Supreme Pontiff.

2ndly. The Pope, in his Apostolic Brief, promised the Baltimore Fathers a proper answer, viz.: the decision of the Holy See.

3dly. The Propaganda was entrusted by the Holy Father with the EXAMINATION of the Decrees.

4thly. The Propaganda EXAMINED them.

5thly. The decision of the Propaganda was, that the WHOLE TEXT of the Baltimore Council, excepting those passages expunged in the *Instructio*, should be inviolably observed in this country.

6thly. The Holy Father was informed of this decision by those whom he had appointed to examine the *Acta et Decreta*, and he confirmed their judgment, and *commanded* that a Decree to this effect should be made out and forwarded to us.

(19). Sacra Congregatio de Propaganda Fide in generalibus comitiis habitis diebus 16, 23, 27 Septembris, anno 1867, ejusdem (Plenarii Baltimorensis Secundi) Concilii Acta et Decreta diligenti inquisitione adhibita expendit, paucisque exceptis correctionibus et animadversionibus, quæ in adjecta epistola memorato Delegato Apostolico significari jussit, eadem ut ab omnibus ad quos spectat inviolabiliter observentur libentissime recognovit.

Quam Sacræ Congregationis sententiam cum subscriptus ejusdem Sacræ Congregationis Secretarius Sanctissimo Domino Nostro, in audientia habita die 6 Octobris, anni prædicti, retulisset, sanctitas sua in omnibus probavit, eaque super re Decretum hoc expediri mandavit.—Acta et Decreta Con. Plen. Balt. II. p. cxxxvi.

(20). In generalibus comitiis, habitis diebus 16, 23, 27 Septembris, anni elapsi, Sacra Congregatio Christiano Nomini Propagando Acta et Decreta Concilii Plenarii Baltimorensis II., mense Octoberis, 1866, celebrati, accuratissime ad examen revocavit, et quibusdam exceptis quæ hac epistola continentur, integrum Concilii textum, prout a Patribus emendatum et propositum est, accedente Sanctissimi Domini Nostri sententia, plane recognovit; uti ex alligato Decreto Amplitudo Tua intelliget.—Acta et Decreta Con. Plen. Balt. II. p. cxxxvii.

7thly. The WHOLE TEXT of the Council, with the exceptions indicated, was returned, therefore, with specific confirmation.

I admit the Roman documents do not contain the formal words *confirmantur Concilii Acta et Decreta confirmatione ex certa scientia data.* But Canonists, as quoted above, do not require that these formal words be actually used. They require only that words which are equivalent be found in the documents of confirmation. Moreover, the documents do contain phrases equivalent to *ex certa scientia*, for they show that a "careful examination" had been made, that "the whole text" of the Council is to be observed, that this was the *sententia* of the Holy Father, and that His Holiness *commanded* the expedition of a Decree to this effect.

In brief, the Roman documents answer the description Canonists give of the *confirmatio ex certa scientia data*; hence the Acta et Decreta of the Second Plenary Council of Baltimore are confirmed *confirmatione specifica seu ex certa scientia data.*

To this Rev. Dr. Smith, page 76, objects the words of Bouix: "Sola statutorum recognitio et approbatio a Sacra Congregatione facta non est Pontificia confirmatio saltem in forma specifica;" "That recognition or approbation of . . . . statutes which is made by the Sacred Congregation alone, is not the Pontifical confirmation, at least is not the confirmation in forma specifica."

This objection is not to the point, as the Roman documents confirming the Baltimore Decrees contain more than the "*sola recognitio et approbatio a Sacra Congregatione facta.*" They contain the *sententia* of the Supreme Pontiff, who *commanded* the sending of a Decree to the effect that they are to be observed by all whom they concern.

On page 75, he holds that Pope Benedict XIV. teaches that the specific confirmation is to be given "by *letters* apostolic."—

Rev. Dr. Smith does not correctly quote Pope Benedict XIV. on this point.

Here is the passage in question:

"Sixtus V. commanded that the Statutes of Provincial Councils, before "being published, should be transmitted to the Sacred Congregation of the "Council, not that they might afterwards obtain confirmation from the "Apostolic See, but that they might be corrected if perchance there be found "in them something excessively rigorous, or not sufficiently consonant with "reason . . . for it sometimes happens that Provincial Councils are not "only reviewed by the Sacred Congregation and corrected, when necessary——, "but also, at the request of the metropolitans who held the Councils, confirmed "by the Holy Father by Apostolic Letters." (21)

This merely shows that *sometimes* the Holy Father confirms by Apostolic Letters. But it does not show that he has not the power of confirming, or

(21). Ea (conciliorum Provincialium statuta), antequam promulgentur transmitti jussit Sixtus V. ad Sacram Congregationem Concilii; non quidem ut postea confirmationem reportent a Sede Apostolica, sed ut corrigantur, si quid fortasse in jisdem aut nimis rigidum, aut minus rationi congruum deprehendatur. *Non semel tamen* accidit, Provincialia Concilia, non solum a sacra congregatione concilii recognosci, et, si opus fuerit emendari, verum etiam a Summo Pontifice, ita petentibus metropolitanis, a quibus sunt celebrata, per Apostolicas Litteras confirmari. Benedict, XIV. de Syn. Diœc. Lib. 13. cap. 3. N. 3.

that he never does it, by means other than "Letters Apostolic," and this is the question at issue.

On the same page Rev. Dr. Smith quotes Bouix as teaching that the specific confirmation "MUST BE given by Letters Apostolic." This is not Bouix's teaching in the passage quoted (de Episcopis, vol. 2, p. 394).

One might sustain the proposition that there is no power in the church to make a permanent law obliging Popes to use "Letters Apostolic" in confirming councils.

Now, according to this same Pope Benedict XIV., it is certain that the confirmation of the Baltimore Decrees is not, and can not be a *confirmatio in forma communi seu ordinaria.*

He Says:

"Those Statutes are said to be confirmed *in forma communi* which are not "singly examined, nor approved by the Pontiff *motu proprio et ex certa scientia,* "and the force of Apostolic authority is not given them absolutely but only "conditionally, namely, if they be framed justly, canonically, and wisely, "*and providing they are not opposed to the Sacred Canons, the Decrees of Trent* "*and the Apostolic Constitutions.* Fagnanus attests that this last condition, "according to the usage of our time, IS EXPRESSED IN ALL CONFIRMATIONS OF "STATUTES IN FORMA COMMUNI." (22).

But this condition is *not* expressed in the confirmation of the Baltimore Decrees. Therefore, said confirmation is not the *confirmatio in forma communi seu ordinaria.* Consequently the Decrees of the Second Plenary Council of Baltimore are confirmed *confirmatione specifica, seu ex certa scientia data.*

It will readily be perceived that the question here is not one of appeal from the misinterpretation or misapplication of the Baltimore Decrees. The question is concerning the force of those Decrees *per se*, or when rightly interpreted, and rightly applied.

The question is not *has the Pope power to abrogate* the Baltimore laws, as well as diocesan or provincial laws. The question is did Rome approve of the Baltimore Decrees in such a manner that they are invested with all the binding force the highest Papal approval can give to Decrees of Plenary Councils, and are said Decrees of force *until revoked* by the Holy See.

The above argument proves that the answer must be affirmative. Hence the Baltimore Decrees are, for us, *permanent* laws or counsels [according to the tenor of the particular numbers] from which no appeal lies; for an appeal is carrying a cause from an inferior to a superior, and the Pope confirming *confirmatione specifica* has no superior. But if the Baltimore Decrees are void at Rome, our Bishops, when ruling according to them, are at sea—and the

(22). In forma *communi* confirmari dicuntur statuta, quæ non singulatim examinantur neque approbantur a Pontifice "motu proprio et ex certa scientia," atque Apostolicæ auctoritatis robur illis non adjicitur absolute sed solum conditionate, videlicet, *si juste, canonice aut provide facta sint; et dummodo sacris canonibus, Tridentini concilii decretis, et Constitutionibus Apostolicis non adversentur:* quam postremam conditionem omnibus statutorum confirmationibus *in forma communi* hodie exprimi solere idem Fagnanus (in cap. si quis, No. 12, de confirmatione utili et inutili) testatur. Benedict. XIV. de Syn. Diœc. Lib. 13, Cap. 5, No. 11.

sea is a stormy one—they labor to reach a port of safety only to be turned out to sea again; and when they shall have gone the whole round they will still be at sea, and sailing for a harbor is a mockery. Why, on this hypothesis the Baltimore Decrees might be called a will-with-a-wisp, an *ignis fatuus*, and have no binding force whatsoever.

Is it for this our Bishops and theologians went to Baltimore in 1866?

Is it such Decrees the Pope *commands* us to observe?

My apology for the length of this article is the gigantic importance of the question treated, and the fact that a short newspaper article of assertion, assertion, assertion, might not suffice to remove the impression Rev. Dr. Smith's teaching has created, nor to correct effectually the blunder the *Pastoral Blatt*, in its number of last August, fell into, in asserting that Dr. Smith's teaching on this question is correct.

REMOVAL OF PASTORS IN THE UNITED STATES.

SECOND ARTICLE.

II. The Rev. Dr. Smith teaches, on page 158 of the *Elements of Ecclesiastical Law*, that:

"Delegated jurisdiction may be validly withdrawn without cause."

And on page 376, he says:

"Our pastors (in the United States) are not parish priests and have but "*jurisdictio delegata.*"

The necessary conclusion of these two propositions, when placed as the major and minor of a syllogism, would be, therefore, the jurisdiction of priests in the United States may be *validly* withdrawn *without cause.*

Again, on page 167, he says:

"As all our pastors are *amovibiles ad nutum episcopi* they can be transferred "against their will *validly* indeed, though not *lawfully* except for sufficient reasons."

Yet in the face of this teaching the author holds, on pages 179 and 180, that:

"In case a pastor (in the United States) is removed *sine causa*, without at the "same time being placed over another congregation of equal importance, he may "have recourse to the Superior for redress, since such removal would seem to be "not only illicit, *but invalid.*"

I do not object to the probability, or desirability of "redress" or re-instatement in such cases; but I must object to the reason advanced; and am confident Dr. Smith, upon careful reflection, would not hold that such removal is "invalid." The cause of this blunder is that in the objectionable passage he does not duly distinguish between removal of those who have *delegated jurisdiction*, and of those who are possessed of *ordinary jurisdiction.* On page 179 he advances the law showing that Canonical Pastors, even when they are *ad nutum revocabiles*, cannot always be removed *without cause*; and then applies this teaching to our priests. But the fact that Canonical Pastors, even when they are *amovibiles ad nutum episcopi*, are possessed of *ordinary jurisdiction*, shows that the law given for them does not apply to our missionary priests, who have but *delegated jurisdiction.*

CANONICAL PARISHES IN THE UNITED STATES.

III. On pages 115, 126, 165, 167, 178, 371, and 376, the Rev. author of the *Elements* teaches that there are no Canonical Parishes in this country; on page 149 he teaches that there is one Parish in New Orleans; and on pages 110, 376 and 386 he teaches that there is no Canonical Parish now in New Orleans, and that there are Canonical Parishes in California.

These several teachings plainly contradict each other, and, excepting the teaching that there are no Canonical Parishes in the United States, they are all false. The erudite Father Konings shows that the one Canonical Parish which existed in New Orleans was abolished thirty years ago, the Holy See approving. (1) This eminent Redemptorist also states that in California there are some Parishes properly so-called, and he so construes No. XVI. of the First Provincial Council of San Francisco, held in the year 1874, as to make it appear that there are some Canonical Parishes in California. (2) Now in the Acta et Decreta of the said Council, I find on page 14, No. 17, the following amongst the questions proposed for synodical deliberation:

"What decree is to be framed to determine the duties of the Pastor toward "the faithful of his Church, and the duties of the faithful toward the Pastor?" (3)

And on page 20, I find when this question came up for deliberation that: "Very Rev. Lentz, Prendergast (4) Vilarrasa (5) and Monogue (6) were in "favor of a decree in which there would be distinctly enumerated the mutual "duties of the Pastor and the faithful, especially all that regards paschal com- "munion and the support to be given the Pastor, with, however, due consid- "eration for those people whose residence is too far removed from the parish "church." (7)

(1.) Parochia existit in Statibus Fœderatis, juxta declarationem Concilii Plenarii Baltimorensis II., No. 108, inixam declarationi Concilii Provincialis Baltimorenis I., unica, nimirum in civitate Neo-Aurelia. Sed ut inquirenti mihi rescriptum fuit, ab annis circiter 30, ratihabenti Sancta Sede, extincta fuit. Konings, Theolog. Moral. vol. II., p. 270.

(2). In California quædam habentur parochiæ proprie dictæ, in quibus, licet non regantur a Parochis proprie dictis, Fideles eorumque Pastores seu Rectores vi juris communis iisdem erga se invicem officiis devinciuntur, quibus parochiani et Parochi proprie dicti. Patet ex sequentibus verbis Patrum Concilii Provincialis Sancti Francisci I. anni 1874: "Declaramus Rectores earum parœciarum, quæ habentur uti parœciæ proprie dictæ, teneri ad omnia munera Parochorum erga fideles intra limites suarum ecclesiarum constitutos adimplenda; fideles autem jus habere ad subsidia spiritualia ab illis seu a propriis animarum Rectoribus recipiendum, ac specialiter teneri ad ipsos recurrere pro Communione Paschali, Baptismo, Viatico, Extrema Unctione et Matrimonio." Ex his concludenum videtur Rectores istos, non secus ac Parochos proprie dictos, teneri ad Missam pro populo offerendam et valide ac licite parochianorum suorum confessiones ubique excipere. Konings, Theol. Moral. vol. I., p. 471.

(3). Quodnam decretum efformandum ut munera Pastoris erga suæ Ecclesiæ fideles ac eorumdem fidelium erga Pastorem dignoscantur?

(4). Who were Theologians of the Provincial Council.

(5). Who was the Commissarius Generalis of the Dominicans in California, and a member of the Council.

(6). Also a Theologian of the Council.

(7). Revdi. oratores Lentz, Prendergast, Vilarrasa et Monogue favent decreto, quo officia mutua Pastoris et fidelium, præsertim quæ respiciunt communionem paschalem et subsidia Pastori tribuenda, distincte enumerentur, dummodo justa ratio habeatur eorum quorum domus ab Ecclesia parochiali nimis distant. Concilii Provincialis S. Francisci I., Acta et Decreta, pp. 14, 20, 28.

These are the lights by which we are to read the Decree formulated and published on page 28 of the Acta et Decreta of the First Provincial Council of San Francisco, and quoted by Konings. Neither of these passages shows that it was the intention of the Council to erect Canonical Parishes, nor does the Decree show that any such erection was made. A strict interpretation shows that the intention was merely to determine the mutual duties of pastors and people in the Province of San Francisco. But it does not appear that the Archbishop and his Suffragans intended by the Decree in question to create Canonical Parishes, or to change that status of parishes, which existed there prior to the Provincial Council.

As a confirmation of my reading of the First Provincial Council of San Francisco, I am able to state that on the 3d of last December a very high authority in California wrote me his opinion regarding this question saying: "I think that in this Our Province there is no Parish canonically constituted."

Wherefore there are no Parishes canonically erected in the United States.

DISMISSAL OF PASTORS IN THE UNITED SATES

AND

SUSPENSION EX INFORMATA CONSCIENTIA.

THIRD ARTICLE.

IV. On page 381 of the *Elements of Ecclesiastical Law*, Rev. Dr. Smith writes:

"How are pastors in the United States dismissed from their parishes *ratione criminis*? We premise the withdrawal of faculties (*revocatio facultatum*) with us "is equivalent to dismissal from the parish (privatio parochiæ). We now answer: Pastors with us should not be dismissed save on regular trial, to be conducted by the Bishop and two priests selected by him. Now, are Bishops in "the United States not merely *exhorted* but *obliged*, to observe this method in dismissing pastors? The Second Plenary Council of Baltimore (No. 77) thus "answers: 'Quamque (i. e. *normam*—namely, mode of procedure or trial by "Bishop and two priests) legis esse communis statuunt hujus Plenarii Concilii "Patres.' The Council, therefore, *enacts* that henceforth this shall be the *common* "*law* all over the United States, viz: 'No priest *accused of an offence shall be punished save on a regular trial*, to be conducted by the Bishop and two priests "selected by him.'"

In this passage there are two grave errors, one, a misconception of No. 77, of the Second Plenary Council of Baltimore, and the other, a repudiation of the teaching of Canonists, and of the Council of Trent, upon suspension *ex informata conscientia*.

The Baltimore Decree reads:

"Finally, let there be chosen, from the members of the Diocesan Council, "if the Bishop see fit, two *Judices causarum*, who, by Episcopal delegation, "shall sit in judgment upon priests charged with crime in the first instance; "and shall proceed according to the rule which was prescribed in the Provincial Council of St. Louis, held in the year 1855, and approved by the "Holy See, and which the Fathers of this Plenary Council embody into the "common law (literally, enact as of the common law). The aforesaid Decree "is as follows: 'Priests who have been interdicted from the exercise of the "priesthood by sentence of the Ordinary, have no right to ask support from "him, as by their own fault they rendered themselves incapable of taking charge "of missions. But, that all cause of complaint may be removed, the Fathers "think it entirely expedient that in criminal causes of clerics and priests, the

"Ordinaries observe a certain form of judicial proceedings, which resembles, "as near as possible, the form prescribed by the Council of Trent, namely: "the Bishop, or his Vicar General commissioned by him, shall select two of the "Episcopal Council, but he shall not always select the same two, who shall "assist him, in presence of the Episcopal Notary, in judicial proceedings "against a priest accused of crime, etc.'" (1)

The principle *lex est strictae interpretationis* permits us to conclude from this passage of the Baltimore Council only that:

1st. The Council of Trent prescribed a form of judicial proceedings to be observed by Ordinaries in certain cases before pronouncing sentence of condemnation upon priests.

2ndly. This form is trial by an ecclesiastical court comprising the Bishop, two *judices causarum*, etc.

3rdly. The Fathers of the Provincial Council of St. Louis, held in the year 1855, *recommended as most expedient* the observance, in the Province of St. Louis, of this canonical trial *in causis criminalibus.*

4thly. The Second Plenary Council of Baltimore *enacted as a law* for the United States the canonical trial *as* recommended by the Provincial Council of St. Louis. Hence this *law* of Baltimore, like the *counsel* of St. Louis, applies only to cases of priests who are accused *in causis criminalibus,* with all the *publicity* Canon Law mentions as characteristic of such cases.

Wherefore, Rev. Dr Smith in applying this law to every priest who for any "offense" may be about to be dismissed from a parish, falsely interprets the law which was enacted only for some specified cases.

Again, his interpretation of this law repudiates the teaching of canonists and of the Council of Trent upon suspension, or dismissal, *ex informata conscientia:*

Suspension *ex informata conscientia* is that which is declared by the Bishop upon obtaining information privately, and, in conscience accepting it, without any canonical trial, or without any verdict rendered after judicial proceedings for the examination of evidence. By force of this power Bishops, without

(1). Demum, ex eorumdem Consultorum numero, si Episcopo videatur, seligantur Judices Causarum qui sacerdotes criminis postulatos in prima instantia, ex Episcopi delegatione, judicent; juxta normam quæ in Concilio Provinciali Sancti Ludovici, anno 1855 habito, a Sancta Sede recognitam præscribebatur, quamque legis esse communis statuunt hujus Plenarii Concilii Patres. Decretum prædictum est hujusmodi.

"Sacerdotes quibus per ordinarii sententiam sacerdotii exercitium interdictum fuerit, nullum jus habent ad sustentationem ab eo petendam, cum ipsi se sua culpa missionibus operam navandi incapaces reddiderint. Ut autem omnis causa querelarum tollatur, censent Patres omnino expedire, ut Ordinarii, in causis criminalibus clericorum aut presbyterorum, servent certam judicii formam, quæ ad illam a Concilio Tridentino præscriptam (Sess. 25, cap. 6; de Reform.) quam proxime accedat; scilicet, ut Episcopus, seu ejus Vicarius Generalis, de ipsius commissione, duos ejusdem Episcopi Consultores, nec semper eosdem eligat, qui ei presbyterum criminis postulatum judicaturo, coram Notario tamen ipsius Episcopi, assistant. Unum autem sit utriusque votum, possitque alter Episcopo accedere. Quod si ambo ab Episcopo, seu ejus Vicario, discordes fuerint, tertium tunc ex prædictis suis Consultoribus ipse eligat, et juxta eam partem, cum qua tertius convenit, causa terminetur. Si autem contigerit omnes Consultores, ab Ordinario electos, ab ejus sententia dissidere, tunc ad Metropolitanum causa referri debet, qui sententiarum motiva expendet et judicium feret. Quando autem quæstio erit de subdito Metropolitani criminis postulato, et omnes Assessores Metropolitani ab ejus sententia dissenserint, tunc appellatio fiat ad seniorem Episcopum comprovincialem, cujus sententia finalis erit, salvis semper Sedis Apostolicæ privilegiis et auctoritate."—Con. Plen. II. Balt., p. 57-58 n. 77.

any *juridical* proofs, and merely upon sufficient *extrajudicial* information, can interdict from the reception of orders; can suspend priests from ecclesiastical offices, dignities, positions and honors for the space of six months; and, provided they state that they have acted *ex informata conscientia*, they are not obliged to make known to priests the cause of suspension. If, however, recourse be had to the Holy See, Bishops are obliged to submit their reasons to the authorities at Rome, who have power to reverse the judgments rendered by Bishops. This suspension can be inflicted only for *occult* crimes.

Vicars General or Vicars Capitular can not *ex potestate ordinaria* suspend *ex informata conscientia*, though they are capable of receiving the power to so suspend, and can exercise it when specially delegated by the Bishop to do so. Administrators, who are not Vicars Capitular, can never exercise this power, because they do not possess it *ex potestate ordinaria*, and are incapable of receiving it as *potestas delegata*.

No one but a Bishop can *ex potestate ordinaria* suspend, or remove, *ex informata conscientia*. Bishops can not exercise this power to excommunicate, or interdict a community or district, or to inflict any ecclesiastical penalty other than those given above.

This, in a condensed form, is the general teaching of canonists on this question. (2)

The Council of Trent also advances this same principle, and teaches that Bishops have the power to suspend priests on merely *extrajudicial* information. (3)

Gallicans and Jansenists denied that this was the real teaching of Chapter the First, Session the Fourteenth, *de Reformatione*, of the Council of Trent; doubts were submitted to the Holy See; on the 24th of November, in the year 1657, a Decree of the Sacred Congregation of the Council decided that this was the correct interpretation. (4) Moreover, the proposition which rejects as null and invalid suspensions *ex informata conscientia* has been condemned in the Bull *Auctorem fidei* as *false, pernicious and injurious to the council of Trent.* Again, the proposition that Bishops of themselves alone are not allowed to use this power of suspending *ex informata conscientia*, has been condemned in the same Bull as *injurious to the jurisdiction of the Prelates of the Church.* (5)

(2). Vide Dr. Stremler, des Peines Ecclesiast. p. 310-340.
Bouix, de Judiciis Ecclesiast. vol. 2, p. 320, etc.
Craisson, Manuale Juris Can. Pict. 1875, vol. 4, p. 184-191.
Benedict XIV. de Synod. Dioec. Lib. 12, Cap. 8.

(3). Ei cui ascensus ad sacros ordines a suo Prælato *ex quacumque causa, etiam ob occultum crimen quomodolibet, etiam extrajudicialiter*, fuerit interdictus; aut qui a suis ordinibus, seu gradibus, vel dignitatibus ecclesiasticis fuerit suspensus; nulla, contra ipsius Prælati voluntatem, concessa licentia de se promoveri faciendo; aut ad priores ordines, gradus, dignitates sive honores restitutio suffragetur.—Con. Trid. Sess. XIV., Cap. I, de Reform. p. 95. Ed. Romæ.

(4). Vide Craisson, Manuale Juris Can., vol. 4, p. 185.

(5). 49. Item quæ damnat ut nullas et invalidas suspensiones ex informata conscientia; *falsa, perniciosa, in Tridentinum injuriosa.*

50. Item in eo quod insinuat soli Episcopo fas non esse uti potestate, quam tamen ei defert Trident. (Sess. 14. c. I., de Reform.) suspensiones ex informata conscientia legitime infligendi; *jurisdictionis Prælatorum Ecclesiæ læsiva.*

There were canonists who thought the words ETIAM *ob occultum crimen* of the Council of Trent, presuppose that Bishops have this power as to *all public* crimes. This teaching, however, is now generally rejected. Rev. Dr. Stremler, who is quoted as an authority by some of the most eminent and recent canonists, and whose position at Rome afforded him rare facilities to master this question, writes: "Occult crimes, and *those crimes which strictly speaking are* "*not occult*, but which, nevertheless, on account of certain peculiar circum- "stances, cannot be brought before the *forum contentiosum*, or become matter "of a formal trial, are the only ones on account of which the Bishop can "inflict suspension extrajudicially: Outside of these two cases the ordinary "canonical proceedings cannot be omitted." (6)

That Bishops shall not, in cases of public delinquencies, depart from the ordinary trials unless when they have sufficient reason, is the general teaching of canonists. (7)

Hence, as Rev. Dr. Stremler shows, when the *crime* be *occult*, or even when it is not strictly speaking occult, but certain peculiar circumstances are against an ecclesiastical trial, Bishops have the power to suspend or dismiss *ex informata conscientia.* Canonists in general, various Roman decisions, and the Council of Trent establish this power beyond all question. Hence appears the falsehood of Rev. Dr. Smith's teaching that: "no priest accused of "an offense shall be punished save on a regular trial," and that: "Pastors "with us should not be dismissed save on a regular trial." The Baltimore law gives our priests a right to expect or demand a canonical trial only *in causis criminalibus* and when the Bishop has no power to suspend *ex informata conscientia.*

No charge of *ignoratio elenchi* can be sustained against this, on the ground that Dr. Smith speaks of *dismissal* from parishes and the above shows only that Bishops have power to *suspend ex informata conscientia*, or to withdraw faculties; for on page 381, Dr. Smith says: "The withdrawal of faculties with us is equivalent to dismissal from the parish."

What Rev. Dr. Smith says, on pages 174 and 175, of the rights of canonically constituted Pastors as against the Bishop *depriving them of their benefices* by any *ex informata conscientia* action, does not apply to our priests who are not canonically constituted Pastors.

(6). Les delits occultes, et les delits qui, sans etre rigoureusement occultes, ne peuvent cependant pas, a raison de certaines circonstances speciales, etre deduits au for contentieux et devenir matiere d'un proces en forme, sont les seuls pour lesquels l'Eveque puisse infliger la suspense extrajudiciairement: hors ces deux cas, il ne saurait omettre la procedure ordinaire.—Dr. Stremler, des Peines Eccles. p. 316.

(7). Council of Trent, Sess. 24, Cap. 5.

Pope Innocent III. Constitutio *Qualiter et quando.*

Pope Benedict XIV., de Synod. Lib. 12, Cap. 8.

Bouix, de Judiciis, Tom. 2, p. 342 et seq.

The following passages, from the Second Plenary Council of Baltimore, speak clearly of the power of our Bishops to dismiss or to remove our priests:

"We admonish all priests residing in these Dioceses, whether they were "ordained here, or adopted into the Dioceses after they received Orders, that "mindful of the promise made at their ordination, they shall not refuse the "charge of *any mission whatsoever designated by the Bishop.*" (8)

"In using the terms parochial right, parish, and pastor, we by no means "intend . . . . to take away or in any manner diminish the power of "depriving any priest of his charge and transferring him elsewhere, which, "according to the discipline obtaining in these provinces, *the Bishop* "*possesses.*" (9)

Is it not strange that Rev. Dr. Smith should have advanced his teaching regarding canonical trial, whilst he so often states that our priests are *amovibiles ad nutum episcopi*?

(8). Monemus omnes sacerdotes in hisce dioecesibus degentes, sive fuerint in iis ordinati sive in easdam co-optati, ut, memores promissionis in ordinatione emissæ, non detrectent vacare cuilibet missioni ab Episcopo designatæ.—Acta et Decreta Con. Plen. II. Balt., p. 75, No. 108.

(9). Parochialis juris, parœciæ et parochi nomina usurpando, nullatenus intendimus. .....potestatem illam tollere seu ullo modo imminuere, quam ex recepta in his provinciis disciplina habet Episcopus quemvis sacerdotem munere privandi aut alio transferendi.—Con. Plen. II., Balt. p. 78, No. 125.

ERECTION OF CANONICAL PARISHES IN THE UNITED STATES.

FOURTH ARTICLE.

V. Rev. Dr. Smith, on page 109 of the *Elements of Ecclesiastical Law*, writes:

"There can be no doubt that Bishops, by virtue of their *potestas ordinaria*, can "create new parishes—that is constitute priests who shall have care of souls in "their own name and by virtue of their office, in such districts and over such "people as are not yet aggregated to any other parish."

Let due credit be given to the Reverend author for having translated this teaching from Dr. Bouix. But, as the question of creating Canonical Parishes in *the United States* is most interesting in our time, one may be pardoned for finding fault with Dr. Smith for not attempting to apply the above teaching to the United States, especially as he so often does apply the general teaching of law to this country, and announces, on the title page, that his work is "adapted especially to the discipline of the Church in the United States." Also, the old axiom, *bonum ex integra causa*; *malum autem ex quocumque defectu*, leaves the Doctor open to criticism for not applying the doctrine on this point *to this country*, and for not treating the question as to whether Bishops *in the United States* have the power to change our missions into Canonical Parishes. The only change spoken of in this country is that of changing Canonical Pastors who are *movibiles ad nutum Episcopi* into Pastors possessed of the *jus inamovibilitatis*, and *vice versa*.

His words (pp. 110 and 111) are:

"Can parishes whose pastors are removable *ad nutum* be changed by the "sole authority of the Bishop, into parishes whose rectors are irremova- "ble, and vice versa? It seems that, *de jure communi*, this change can be "made by the Holy See only. . . . Custom, it would seem, may authorize "Bishops to make this change even without leave from the Holy See. "Thus, according to Bouix, the Bishops of France, without being empowered to "do so by the Holy See, sometimes change parishes whose pastors are removable "into parishes with irremovable pastors. Whether custom in the United States "may enable our Bishops to undertake this change, we shall not decide. We "feel inclined to think it cannot; for, apart from the law forbidding such change "by Bishops, all *causæ majores—i. e.* matters of greater importance—are to be re- "ferred to and determined by the Holy See. Now, no one will deny that to make "pastors in the United States irremovable, even though it be in the larger cities "only, is a change of no ordinary moment, especially as all our pastors are at "present *amovibiles ad nutum episcopi*. There can be no doubt, however, that "whenever, in the judgment of our Bishops, this change becomes opportune, it "will readily be permitted by the Holy See."

How singular that Dr. Smith should go on to speak of the "custom" of changing Canonical Parishes in this country, without having spoken of the erection of Canonical Parishes here. Moreover, if the importance of the matter forbid Bishops to make a change, except by special papal authority, our Bishops have no power to change our missions into Canonical Parishes, as "no "one will deny" that to make such change "even though it be in the larger "cities only, is a change of no ordinary moment, especially as all our Pastors "are at present *amovibiles ad nutum episcopi.*"

Some thoughts upon the power of our Bishops in this matter may be worthy of attention.

It may be a source of light to mention the various questions relating to this point:

1st. The formation of missions or congregations, such as we now have, throughout the States.

2ndly. Erecting our missions into Canonical Parishes with *movable* Pastors.

3dly. Erecting our missions into Canonical Parishes with *immovable* Pastors.

4thly. Changing canonically erected Parishes whose Pastors are movable into Parishes with immovable Pastors, or *vice versa.*

5thly. Erecting Canonical Parishes *per viam dismembrationis*, or from dismembered, or portions of dismembered Parishes.

6thly. Erecting Canonical Parishes *per viam unionis*, or by uniting Canonical Parishes.

The first of these questions offers no difficulty; the fourth, fifth and sixth are of no practical use to us now as they presuppose the existence of Canonical Parishes, though certainly they are to be treated in a Course of Canon Law. We may dismiss the third with the observations that immovability is not essential to the existence of Canonical Parishes, and even if we were to have such Parishes here, one might defend the proposition that there are very grave reasons against making Pastors in the United States immovable. The second question is the one that is the most essential for us.

Bishops in the United States have the power to change our missions into Canonical Parishes. The following is the argument that now offers: The United States Bishops have that power which is within the *ordinary power* of Bishops. Moreover, the creation of Canonical Parishes is within the *ordinary power* of Bishops. Therefore, the Bishops in the United States are possessed of the power to create Canonical Parishes. The first proposition will not be questioned. It is necessary to prove only the second to have the conclusion admitted. The Council of Trent says: "In those cities and places where "parochial churches *have not definite limits*, and where rectors have not *their own* "*people* to rule, but administer the sacraments to those promiscuously asking "them, the Holy Synod *commands* Bishops, for the surer salvation of those souls "entrusted to them, *to divide the people into definite and proper parishes and as-* "*sign to each its own perpetual, special pastor* who may be able to know the souls, "and from whom alone they can lawfully receive the sacraments, or to provide

"for this by other, more useful, means according as the character of the place "demands. The Holy Synod also commands Bishops *to erect, as soon as possible,* "*parish churches* in those cities and places where there are none, any privileges "or customs whatsoever, even those which are immemorial, to the contrary "notwithstanding." (1)

Again, the Council of Trent teaches:

"In all those Parochial, or baptismal churches . . . . which, on ac- "count of distance or difficulty, the parishioners can not, without great in- "convenience, attend, to receive the sacraments, and be present at the divine "offices, the Bishops, EVEN AS DELEGATES OF THE APOSTOLIC SEE, CAN "ERECT NEW PARISHES, even in case the rectors are unwilling, according to "the rule of the Constitution of Alexander III, which begins *Ad audientiam* " . . . And such erection cannot be impeded, or annulled by any laws "or derogations whatsoever." (2)

In the year 1170, the Bishop of York found it necessary to erect a second church within the limits of the Canonical Parish of H—, as the circumstances of the location of the Parish Church, made it very difficult for many persons to attend the services in winter. The case was sent to Rome. This called out the Constitution *Ad audientiam* of Alexander III. in which his Holiness approved of accommodating the people, and commanded the Bishop of York to divide the old Parish, erect another Parish Church and appoint the Rector. About four centuries later the Council of Trent referred to this decretal, approved the principle it involved, and framed the law for Bishops to erect Parishes *per viam dismembrationis.* (3)

Canonists, in general, teach that Bishops have the power to create Canonical Parishes. Quotations from a few authors will suffice. In his definition of a Parish, Rieffenstuel says:

"A Parish is a certain territory or district determined by the Pope *or* "Bishop, having a permanent rector, etc." (4)

(1) In iis quoque civitatibus, ac locis, ubi parochiales ecclesiæ certos non habent fines, nec earum rectores proprium populum, quem regant; sed promiscue petentibus sacramenta administrant; mandat sancta synodus episcopis, pro tutiori animarum eis commisarum salute, ut: distincto populo in certas propriasque parochias, unicuique suum perpetuum peculiaremque prochum assignent, qui eas cognoscere valeat, et a quo solo licite sacramenta suscipiant; aut alio utiliore modo, prout loci qualitas exegerit, provideant. Idemque in iis civitatibus ac locis, ubi nullæ sunt parochiales Ecclesiæ, quamprimum fieri curent: non obstantibus quibuscumque privilegiis et consuetudinibus, etiam immemorabilibus. Concil. Trident. Sess. 24, *de Refor.* Cap. 13.

(2) *Episcopi, etiam tanquam Apostolicæ Sedis delegati,* in omnibus ecclesiis parochialibus, vel baptismalibus in quibus.....ob locorum distantiam, sive difficultatem, parochiani, sine magno incommodo ad percipienda sacramenta et divina officia audienda accedere non possunt, *novas parochias,* etiam invitis rectoribus, juxta formam constitutionis Alexander III., quæ incipit Ad audientiam *constituere possint*.....Quacumque reservatione generali, vel speciali, vel affectione, supra dictis ecclesiis non obstantibus. Neque hujusmodi ordinationes, et erectiones possint tolli, nec impediri, ex quibuscumque provisionibus, etiam vigore resignationis, aut quibusvis aliis derogationibus, vel suspensionibus. Con. Trident. Sess. 21, *de Reform.* Cap. 4.

(3) Vide Bouix, de Parocho, p. 247. Paris Ed. 1867.

(4) Parochia est certum territorium seu districtus, per Papam vel Episcopum determinatus, habens unum rectorem stabilem. Rieffenstuel, Jus Can., vol. 4, p. 290.

Again, this author proves the following proposition:

"Besides the Pope only the Bishop can and ought to erect and divide "Parishes:" (5)

In proof, he quotes the Council of Trent, as given above, and says this is the teaching of Barbosa (6) and of Canonists in general.

He also proves the proposition:

"For the existence of a Parish it is required that it be erected by the author- "ity of the Pope *or* Bishop." (7)

This authority also teaches that Bishops can and ought to erect new Parishes *per viam dismembrationis.* He says:

"There are causes on account of which a new church can be built to the "prejudice of another, even a Parish Church; especially if, on account "of the distance, the inhabitants of the place cannot attend the old church "without great difficulty, especially in the winter season, or during inunda- "tions: In this case it is expressly enacted by the Council of Trent that "the Bishop can and ought to erect a new Parish Church even when the "Pastors of the old churches are unwilling or are injured thereby." (8)

To the question, what is required that a church may be called parochial, Schmalzgrueber answers:

"The power of binding or loosing in the tribunal of Penance.

"A district circumscribed by certain limits within which the people as- "cribed to the church shall dwell.

"*The authority of the Bishop* designating its limits and assigning its parish- "ioners." (9)

Bouix, speaking of the creation of Canonical Parishes in Europe, says:

"It very rarely happens that there is found a territory or people not yet "ascribed to some Parish;" but turning his attention to such countries as ours, he observes: "In countries of infidels, lately converted to the faith, "there is room for the erection of new Dioceses and for the creation of new "Parishes." He then lays down the following principle: "There is no "doubt that by his *ordinary power* a Bishop can erect into a Parish that "district or people which had never been ascribed to any Parish; that is he

(5) Parochias erigere et dividere præter Papam solus potest et debet episcopus. Rieffenstuel, Jus Can., vol. 4, Paris Ed., 1867, pp. 590-591.

(6) Can. *nullus omnino.* II. can. 16. q. 7.

(7) Ad parochiam requiritur ut auctoritate Papæ vel episcopi sit erecta. Rieffenstuel, l. c.

(8) "Dantur Causæ, ob quas ecclesia nova in præjudicium alterius etiam parochialis ecclesiæ ædifi- "cari potest; præcipue si ob nimiam distantiam, incolæ loci ad priorem ecclesiam sine magna difficul- "tate, præsertim tempore hyemali, aut cum pluviæ inundant, venire non possint; hoc enim in casu "novam ecclesiam parochialem ædificari, vel jam extantem pro parochiali deputari per episcopum "etiam invitis rectoribus antiquarum ecclesiarum, ac in eorum præjudicium posse, imo et debere, ex- "presse statuitur a concilio Tridentino, Sess. 21, de Reformatione, Cap. 4." Reiffenstuel, Jus Can. vol. 5. p. 200.

(9) Quid requiritur, ut ecclesia aliqua dici parochialis possit?

1 Potestas ligandi, et solvendi in foro pœnitentiali.

2 Locus certis limitibus constitutus, in quo populus alicui ecclesiæ deputatus degit.

3 *Auctoritas episcopi* designantis eidem limites, et constituentis populum parochianum. Schmalz- grueber, Jus Ecclesiasticum, vol. 6, page 645. Edit. Rome, 1844.

"can appoint a priest there who, in his own name and by virtue of his office, "shall have charge of those souls." (10).

Bouix, furthermore, writes as follows:

"Bishops, both as delegates of the Apostolic See and as Ordinaries of "Dioceses, possess the power of erecting new Parishes *per viam dismembrationis.* " . . . When Leurenius sometimes states that recourse was had to the "Pope, and that the erection made by the Bishop is confirmed by the "Pope, we must understand that such recourse or confirmation was not of "necessity, but was spontaneous and for surety, as Leurenius himself states. " . . . That Bishops *ex jure ordinario* have power of erecting Parishes "*per viam dismembrationis* is proven from the manner in which the Council of "Trent speaks. For whenever the word *etiam* is used in conferring any "power upon Bishops as delegates of the Apostolic See, it is a proof, (as Doctors "generally teach) that they also possess the same power *ex jure ordinario.*" (11)

Craisson writes:

"As to Parishes, it is certain that *Bishops* can constitute them . . . . "*per viam creationis*, or, . . . out of a people or territory as yet ascribed to "no Parish, as is the case *in partibus infidelium.*" (12)

Finally, Pope Pius VII., in the Bull *Ecclesia Christi*, says:

"When Dioceses are constituted it is very necessary that the limits of "Parishes should be determined; we wish this circumscription to be made by "the Bishops." (13)

Hence, according to the Council of Trent and the general teaching of Canon Law:

1st. Bishops *ex postate ordinaria* can create Canonical Parishes;

2ndly. They can erect Canonical Parishes *per viam dismembrationis ex potestate tum ordinaria tum delegata*;

3dly. The Council of Trent commands them to exercise this power as soon as possible.

(10) Rarissime contingit in aliqua diœcesi reperiri territorii populive partem aliquam, quæ alicui jam constitutae parochiæ non abscribatur.

In regionibus infidelium, ad fidem catholicam noviter sabactis datur locus novarum diœceseon erectioni; et in hujusmodi semel constitutis diœcesibus reperiuntur in parochias distribuendi populi, qui nulli adhuc parochiæ adscripti fuerant.

Dubium non est ad ordinariam Episcopi potestatem pertinere, eam diœcesis suæ regiunculam plebemve quæ nondum ulli parochiæ adscripta foret, in parochiam erigere; id est ibi sacerdotem constituere, qui proprio nomine et ex officio illarum animarum curam exerceat. Bouix, de Parocho, p. 245.

(11) Episcopis, tum etiam quatenus a Sede Apostolica delegatis, tum etiam quatenus Ordinariis competit potestas per viam dismembrationis novas erigendi parochias.....Dum autem dicit Leurenius quandoque recurri ad Papam, et a Papa *confirmari* erectionem ab Episcopo factam, id intelligendum est, de recursu et confirmatione non ex necessitate sed libere et ad cautelam adhibitis; prout ipse Leurenius adnotat in citato opere. Eadem potestas Episcopis etiam competit *jure ordinario.* Confirmatur ex modo loquendi Tridentinae Synodi. Quando enim aliquam potestatem Episcopis conferendo tanquam Sedis Apostolicæ delegatis, addit vocem *etiam*, signum est (prout communitur tradunt doctores) eam potestatem *ordinario* simul jure ipsis competere. Bouix, de Parocho, pp. 248-249.

(12) Quoad parochias certum est illos posse ab Episcopis instituti.....*per viam creationis*.....ex populo vel territorio nondum ulli parochiæ adscripto, sicut contingit in *partibus infidelium.* Craisson, Man. Juris Can. vol. I. pp. 173-174. Ed. Pict. 1875.

(13) Constitutis diœcesibus, cum omnino necesse sit limites etiam parœciarum constitui, earum circumscriptionem ab Episcopis fieri volumus. Bouix, de Parocho, p. 221.

Wherefore, Bishops in the United States, without any special authorization from Rome, have, *ex potestate ordinaria*, the power of erecting Canonical Parishes in their Dioceses, and they are commanded to do it *quamprimum*.

There is a fact in the history of Parishes which confirms this teaching, namely: the erection of Canonical Parishes in Canada. The 30th of last November, Monsigneur Taschereau, the gracious Archbishop of Quebec, deigned to write in answer to my enquiries on this matter, that without any special authorization from Rome, and solely by the exercise of the *ordinary jurisdiction* of Bishops, all the Canonical Parishes in Canada were erected, excepting those in Montreal, where an appeal was made to the Holy See against the Bishop, and the creation of Parishes took place with a special Apostolic authority. (14)

Hence, whenever in the judgment of our Bishops this change becomes opportune, there will be no delay in making it, for our Bishops have the power, and are commanded to exercise it *quamprimum*.

It may not be much of a venture to go a step farther and say, whenever, in the discharge of their most solemn duties, the Bishops of a province, or even the Bishop of any Diocese, find it opportune to make the change, there will be no hesitation in effecting it on the ground that the power is lacking. But the question of power is not the only one to be considered. No Bishop, it will readily be conceded, would declare such change opportune in his Diocese, however well it might be prepared for Canonical Parishes, without having considered the momentous question of his relations with neighboring Dioceses and Provinces. Exercising this power in a single Diocese might be as annoying as declaring a single province a republic in a confederation of monarchies. As to changing our relations with Rome, it is to be supposed that the Holy Father would be informed, if for no other object than to ask his benediction. However, the question here is not the practical workings of the exercise of this power. Nor is it our province to decide when such change is opportune. This must be left to the most prudent judgment of the Holy See and of our most worthy Hierarchy. Our question is the teaching regarding the subject of the power to change our missions into Canonical Parishes.

In the passage quoted from Dr. Smith in the beginning of this article, he says:

"Custom, it would seem, may *authorize* Bishops to make this change, even "without leave from the Holy See. Thus, according to Bouix, the Bishops of "France, without being empowered to do so by the Holy See, sometimes change "Parishes whose pastors are movable into Parishes with irremovable pastors."

(14) ARCHEVECHE DE QUEBEC, QUEBECI, 25° Januarii, 1878.

Revdo. D. P. F. QUIGLEY, D. D., Cleveland.

REVERENDE DOMINE:

Juxta votum a te expressum in tua epistola 21 currentis, licet tibi publice declarare me dixisse omnes parochias in hac Canadensi provincia erectas fuisse ex sola jurisdictione episcopi, sive erectio fiat ex territorio nullius, sive fiat per viam dismembrationis.

Quædam Marianopoli erectæ sunt cum speciali auctoritate Sanctæ Sædis, quia contra earum erectionem appellatio facta fuerat ad Sanctam Sedem.

* * * * * * * * * * * * * * * *

†E. A. ARCHPUS. Quebecen.

Let us examine this question a little. In the Concordat entered into in the year 1801, between Pope Pius VII. and Napoleon Bonaparte, provision was made for the erection only of Parishes with immovable Pastors. By the Concordat entered into the year 1827, between Pope Leo XII. and William I. of Belgium, the Concordat between Pope Pius VII. and France, was extended to the northern province of Belgium—it had previously obtained in the southern provinces. (15)

To the Concordat with France, Bonaparte, in the year 1802, added the Organic Articles making regulations according to which there were to be Succursal Churches with movable Pastors. In articles 31, 61 and 63, we find the following:

"There shall be at least one Canonical Parish for every district of Justice. "Moreover, there shall be established as many Succursal Churches as shall be "needed.

"Each Bishop, conjointly with the prefect, shall regulate the number and "extent of those Succursal Churches.

"The priests, serving the Succursal Churches shall be appointed by the "Bishops.

"The vicars and curates shall exercise their ministry under the guidance "and direction of the Pastors. They shall be approved by the Bishop and "shall be movable by him." (16)

Now the Bishop of Liege proposed a doubt to the Holy See, as follows:

"Most Holy Father: Are we, in consideration of the present circum- "stances of affairs, in places like Belgium, in which the required change of "the civil law cannot be effected, to hold as valid and binding in conscience, "until otherwise decided by the Holy See, that discipline which was in- "troduced after the Concordat of 1801, and according to which Bishops are "accustomed to confer jurisdiction, revocable at will, upon the Rectors of those "churches, which are called succursal, and are they, if recalled or sent else- "where, bound to obey?" (17)

In the Roman answer received from Cardinal Polidorius, Prefect of the Congregation of the Council, it was declared that His Holiness, Pope Gregory XVI. decided in favor of this discipline, May 1, 1845:

"Our Most Holy Lord . . . graciously consented to have no change "made regarding the ruling of Succursal Churches, until otherwise decided by "the Holy See." (18)

(15) Vide De Luise, de Jure Diplomatico, pp. 571-588.

(16) Il y aura au moins une *paroisse* par justice de paix. Il sera en outre etabli autant de *succursales* que le besoin pourra l'exiger.

Chaque eveque de concert avec le prefet, reglera le nombre et l'etendue de ses succursales.

Les pretres desservant les succursales sont nommes par les Eveques.

Les vicairies et desservants exerceront leur ministere sous la surveillance et la direction des cures. Ils seront approuves par l'Eveque et revocables par lui.

(17) Beatissime Pater: An, attentis præsentium rerum circumstantiis, in regionibus in quibus, ut in Belgio, sufficiens legum civilium fieri non potuit immutatio, valeat et in conscientia obliget, usque ad aliam sanctæ Sedis dispositionem, disciplina inducta post concordatum anni 1801, ex qua Episcopi rectoribus ecclesiarum quæ vocantur succursales jurisdictionem pro cura animarum conferre solent ad nutum revocabilem, et illi, si revocentur vel alio mittantur, tenentur obedire. Bouix, de Parocho, p. 224.

(18) Ex audientia Sanctissimi, die 1 Maii, 1845, Sanctissimus Dominus Noster.....benigne annuit ut in regimine ecclesiarum succursalium, de quibus agitur, nulla immutatio fiat, donec aliter a Sancta Apostolica Sede statutum fuerit. Bouix, de Parocho, pp. 223-224. Ed. Paris, 1867.

Moreover, Pope Pius IX, so gloriously reigning, declared, Oct. 5th, 1864, that this decision applied also to France.

The Concordat provided for the appointment of only immovable Pastors. The Parishes had been erected with immovable Pastors; subsequently the civil law designated the Pastors of Succursal Churches as movable; Bishops assented to the civil law. In this state of affairs the Bishop of Liege asked could this discipline of moving the Pastors of Succursal Churches be enforced, and the Pope graciously assented.

Observe, the Holy Father did not answer that "custom authorized "Bishops" to make such appointments and removals, that their discipline was *legitimate*; but in his answer used a formula—*benigne annuit*—which is usually brought into requisition in granting a faculty which one has not *de jure*. Wherefore, we must hold that *introducing* said discipline was *illegal*; but it pleased His Holiness, by special concession, to make it *thenceforth* legal, the law of the Concordat to the contrary notwithstanding. (19)

Dr. Smith refers to Bouix, p. 240, as proof that Bishops in France, without being empowered by the Holy See to do so, change Parishes whose Pastors are movable into Parishes with immovable Pastors. This is a singular blunder for in the place referred to, Bouix teaches the very contrary, for he distinctly states that Pope Gregory XVI. permitted, and even commanded, the continuance of the discipline introduced regarding Succursal Churches contrary to the prescription of the Concordat.

Bouix furthermore shows that the discipline introduced consisted in:

1st. Constituting the Rectors of Succursal Churches removable *ad nutum episcopi*:

2ndly. After a certain arrangement with the government, changing the Succursal Churches, with movable Pastors, into Churches with immovable Pastors.

Wherefore, Bouix shows that the Holy See *has empowered* the Bishops of France to "sometimes change Parishes whose Pastors are movable into Parishes with irremovable Pastors." (20)

(19) Vide Bouix, de Parocho, pp. 223-236.

(20) Gegorius XVI. hisce verbis, *in regimine ecclesiarum succursalium nulla immutatio fiat*, legitimam et continuandam decrevit *inductam* quoad succursalium regimen *disciplinam*. Porro quemadmodum inducta fuerat disciplina et praxis ut rectores succursalium ad nutum removerentur, ita etiam usu et praxi inductum fuerat, ut identidem episcopi *succursales* ecclesias erigerent ad conditionem earum quæ initio sub titulo *paroisses* constitutæ sunt, dummodo gubernium in tituli mutationem, et in solvendam novo titulo correspondentem pensionem consentiret. Quo peracto ecclesia succursalis jam non reputabatur disciplinæ revocabilitatis ad nutum subjecta, sed beneficiis perpetuis accensebatur. Hæc, inquam, ante Gregorium XVI. perpetuo viguerat praxis. Cum ergo praxis haec fuerit pars illius *inductæ* post concordatum quoad succursales *disciplinæ*, quam continuari Pontifex permittit, imo et praecepit, ex ipsius rescripto colligenda etiam venit hujusce praxeos legitimitas.

Bouix, de Parocho, p. 240. Ed. Paris, 1867.

THE LAW ON THE IMPRIMATUR

FOR THE UNITED STATES.

FIFTH ARTICLE.

VI. On page 246 and 247 of the *Elements*, Rev. Dr. Smith writes:

"Are books in the United States treating *de rebus sacris* to be submitted to the "ordinary before publication? We reply in the affirmative as to bibles published "in the vernacular, catechisms, prayer-books, and class-books for colleges and "schools. As regards other books *there are two opinions:* one holds that the Second "Plenary Council of Baltimore *enjoins* that all books treating *de rebus sacris* should "be submitted to the ordinaries before publication; the other that the Fathers "of Baltimore merely *counsel* it. As a matter of fact, books on religion are not "unfrequently published without the approbation of ordinaries by authors whose "faith and piety are above all suspicion. This would seem to point to the "abeyance of the law, if, indeed, it was really enacted by the Council."

Again, in the preface, page 5, speaking of this point, he says:

"*To cause the book* (The Elements) *to be received* with greater confidence, and *to* "*make sure that it contained nothing contrary to faith, good morals, and the common* "*opinion of Canonists*, we cheerfully submitted it to our ecclesiastical superiors. "Upon the report of the theologian appointed to examine the work the imprim- "atur which adorns the front page was graciously granted by his Eminence the "Cardinal Archbishop of New York."

Here, Rev. Dr. Smith teaches that the obligation of obtaining the *imprimatur* of the Ordinary, prior to publishing, in the United States, books treating of holy things, is a matter of *opinion*; he gives authority for the *opinion* affirming the obligation; he gives no authority for the *opinion* denying it, but says in a foot note:

"This second *opinion* rests merely on the *argument* that the Council (of Balti- "more) does not *directly*, but only, if at all, *inferentially* enact the law in question. "The first *opinion seems, therefore, safer.*"

There is no "opinion" whatsoever regarding the obligation of obtaining the *imprimatur* for works treating of holy things prior to publishing them in the United States. There is a clear, distinct, positive *law* imposing this obligation; also, there is an unmistakable prohibition against reading books treating of holy things when published without the *imprimatur* of the Ordinary.

The Second Plenary Council of Baltimore advances this law, saying:

"It is forbidden *by the law of the Church* to publish books concerning "Religion and divine worship, without the approbation of the Ordinary. If, "however, such books should be published without consulting the Bishop, "or against his will, one must abstain from reading them." (1)

(1) Iam vero ecclesiæ lege, libri ad Religionem et Dei cultum spectantes sine Ordinarii approbationem prælo committi vetantur: quod si, Episcopo inconsulto aut invito, in lucem prodierint, eorum lectione abstinendum est. Con. Plen. II. Balt. No. 602, p. 254.

One might object that from the title of the chapter containing this passage, it would seem that the Fathers of Baltimore treat only of prayer-books—*de libris inter proecandum adhibitis.* But there are in Canon Law various principles, such as *verba generalia generaliter sunt intelligenda*; *ratio legis est anima legis*; *scire leges, non hoc est verba earum tenere, sed vim ac potestatem*, etc., which show that the title of a statute, or the heading of a chapter is not, properly speaking, any part of the statute, and that the words of a statute are to be taken in their usual and natural signification. (2)

If one question this law, on the ground that the heading of the chapter makes it obscure, we have only to appeal to the official interpretation. Canon Law teaches that interpretation *ex parte causæ efficientis*, is authentic, doctrinal, etc.; that an authentic interpretation *has the force of law, and must necessarily be acquiesced in* by all concerned. The old law axioms *ejus est legem interpretari, cujus est condere*; and *unde jus prodiit, interpretatio quoque procedat*, as well as the general teaching of Canonists, on interpretation, establish this beyond all question. (3)

Now the Fathers of Baltimore have given us an authentic interpretation of the law in question, thereby settling the point. In the Second Plenary Council of Baltimore assembled, they say on this question, in their Pastoral Letter to the clergy and laity of their charge:

"The Council of Trent requires that ALL BOOKS which treat of Religion "should be submitted before publication to the Ordinary of the Diocese in "which they are to be published, for the purpose of obtaining his sanction, "so as to assure the faithful that they contain nothing contrary to faith or "morals. THIS LAW IS STILL OF FORCE; and in the former Plenary Council "its observance was urged, and the Bishops were exhorted to approve of no "book which had not been previously examined by themselves, or by clergy-"men appointed by them for that purpose, and to confine such approbation "to works published in their respective Dioceses," (4)

This authoritative interpretation proves clearly that the Fathers of Baltimore, in the exercise of their legislative power, intended to enact, and actually did enact for this country a *law* obliging authors to submit books treating of holy things, for the episcopal *imprimatur*. The Tridentine law, to which reference is made, reads:

"As publishers, falsely thinking that it is allowed them to publish what-"soever they please, have, beyond all bounds, and without the permission of "their ecclesiastical superiors, published, at times from a secret press and at "times from a lying press, the books of the Sacred Scriptures, and all manner "of annotations and expositions of said books, and, what is worse, without the "name of the author, ... the most holy synod desiring to impose "limits upon publishers, declares and enacts that for the future, ...

(2) Vide Reiffenstuel Jus Can. vol. I. pp. 183-195. Paris Ed. 1864.

(3) Interpretatio authentica est illa, cui necessario est acquiescendum, et quæ vim legis obtinet. Reiffenstuel, Jus Can., vol. I. p. 180.

(4) Acta et Decreta Con. Plen. II Balt., p. CXV.

"it shall be permitted to no one, under penalty of being anathematized, to "print or to cause to be printed, without the name of the author, ANY BOOKS "WHATSOEVER TREATING OF HOLY THINGS, or to sell or retain such books "*unless they shall have been previously examined* AND APPROVED *by the Or-*"*dinary.*" (5)

It has been claimed that it is practically impossible to have books examined; that the First Plenary Council of Baltimore treating this matter provided for the appointment by the Bishops of theologians for the purpose of examining books prior to publication; that Bishops have not complied with this Decree, and that, therefore, the above law for authors is in abeyance.

The Decree of the First Plenary Council of Baltimore, here referred to, is as follows:

"We counsel every Bishop to select in his Diocese one or more priests "thoroughly versed in theology, who may examine prayer books, or books "otherwise concerning Religion, before they shall be recommended to the "faithful by the approbation of the Ordinary or Vicar General." (6)

Moreover, this *counsel* offered Bishops by the First Plenary Council of Baltimore was changed by the Second Plenary Council of Baltimore into a positive *law* obliging all Bishops in whose Dioceses there are Catholic publishing houses. (7).

But even granting that some Bishops have not complied with the law obliging them to appoint examiners, can this prove that authors are thereby exempt from the law obliging them to submit their works for the episcopal *imprimatur* prior to publication? Is it not absurd to hold that because a Bishop violates law everybody else may violate law? Is it not worse than ludicrous to advance such absurdities as the teaching of Canon Law? Why not submit one's manuscript, ask approbation, and then wait and see whether the required appointment will not be made, or whether it will be impossible to obtain the *imprimatur*?

It has also been held that the Rules of the Index are not binding in this country; that the tenth Rule of the Index obliges authors to obtain the *imprimatur*, and that, therefore, in this country authors are exempt from the law on the *imprimatur*.

(5) Sed et impressoribus modum in hac parte, ut par est imponere volens, qui jam sine modo, hoc est, putantes sibi licere, quidquid libet, sine licentia superiorum ecclesiasticorum, ipso sacræ scripturæ libros, et super illis annotationes, et expositiones, quorumlibet indifferentes, sæpe tacito, sæpe etiam mentito prælo, et quod gravius est, sine nomine auctoris imprimunt: alibi etiam impressos libros hujusmodi temere venales habent; discernit, et statuit, ut posthac sacra scriptura, potissimum vero hæc ipsa vetus, et vulgata editio, quam emendatissime imprimatur: *nullique liceat imprimere, vel imprimi facere quosvis libros de rebus sacris sine nomine auctoris: neque illos in futurum vendere, aut etiam apud se retinere, nisi primum examinati, probatique fuerint ab ordinario, sub pœna anathematis.* Concil. Trident. Sess. IV. p. 8. Ed. Romæ, 1862.

(6) Consulendum Episcopis, ut in suis quisque diocesibus unum aut plures sacerdotes scientia theologiæ insignes designent, qui examini subjiciant libros prælum, aut aliter ad religionem pertinentes, priusquam ab Ordinario aut Vicario ejus generali approbatione fidelibus commendentur. Con. I. Plen. Balt. No. 85. Ed. 1853.

(7) Quod decretum iterum confirmamus, atque ita ampliamus ut omnes Episcopos obligandi vim habeat, in quorum diœcesibus sint præla aut typographea Catholica Con. II. Plen. Balt. p. 255, No. 503.

It is true that the illustrious Archbishop Kenrick advances as an *opinion* that the Rules of the Index appear to be practically suspended in some countries. But it is also true that he tells of the *commands* of the Sovereign Pontiffs, especially that of Clement VIII, enforcing those Rules everywhere; he also mentions the fact that in 1674 the Sacred Congregation of the Index declared that those Rules *oblige all Christians.* (8) Moreover, the most eminent Canonists hold that the Rules of the Index are of force everywhere. (9) Again, the fact that the church *could* and actually *did* make those Rules binding upon all, gives them the right of possession. Hence they are of force until legitimately suspended. A mere doubt or opinion against the binding force of laws certainly and properly enacted and promulgated and not certainly abrogated, does not suspend them. The argument that they are not accepted in certain places, does not suspend them, for the binding force of laws does not depend upon the consent, or acceptance of the subjects of the laws. But we waive all this, and yet, regardless of the binding force of the Rules of the Index, and of the Council of Trent, the *law of Baltimore* is of force, for it was lawfully enacted, specifically approved, and properly promulgated. Archbishop Kenrick lived, and wrote, and died long before the Second Plenary Council of Baltimore. In any case to set up the opinion of *any individual* against specific laws, properly enacted, approved, and promulgated, especially in face of the *authoritative* interpretation supporting those laws, is clearly against Canon Law. Therefore, no teachings of any private doctor, interpreting any Canonist, can ever supercede the positive laws of Baltimore.

Finally, as recently as the year 1869, in the *Constitutio Apostolicae Sedis*, Our Holy Father, Pius IX, renews the excommunication of the Council of Trent against all those: "Who print or cause to be printed, without the appro- "bation of the Ordinary, books treating of holy things." (10)

Wherefore, the necessity of obtaining the episcopal *imprimatur* is not a matter of *opinion.* It is clearly a positive *law* binding upon authors in the United States publishing books treating of holy things. Not asking or obtaining the *imprimatur* is a grave mistake, and a violation of the law, but does not abrogate the law.

It seems queer that Rev. Dr. Smith, in his preface, ignores the obligation of *complying with this law* on the *imprimatur*, whilst on page 246 he admits the law is of force for "class-books for colleges," and states in the preface, that his work, together with another volume, to appear at an early day, "will form "a complete *text-book* of Canon Law."

Our next article will close the *critique* on the *Elements.*

(8) Theol. Mor. vol. II. p. 53. Ed. 1861.

(9) Vide Reiffenstuel, Jus Can. vol 6, p. 243 et seq.

Craisson Manuale Juris Can. vol. I. p. 388 et seq.

(10) Præter hos hactenus recensitos, eos quoque quos sacrosanctum Concilium Tridentinum reservata Summo Pontifici aut Ordinariis absolutione....., excommunicavit, Nos pariter ita excommunicatos esse declaramus excepta anathematis pœna in decr. Sess. IV. *de edit.* et usu sacrorum librorum constituta, cui illos tantum subjacere volumus, qui libros de rebus sacris tractantes, sine Ordinarii approbatione imprimunt aut imprimi faciunt. Constitutio *Apostolicæ Sedis.*

REAL VALUE OF REV. DR. SMITH'S ELEMENTS.

SIXTH AND LAST ARTICLE.

VII. On page 5, in the Preface to his *Elements*, Rev. Dr. Smith writes:

"*The method observed* in the present volume is that of Craisson in his celebrated "*Manuale Totius Juris Canonici*, a work which was approved at Rome and honored "with a congratulatory letter from the Holy Father."

It is painful to feel called upon to charge an "author" with literary piracy; yet it is only justice to Vicar General Craisson and to our English-speaking public, to announce that the Rev. Dr. Smith's *Elements of Ecclesiastical Law* are, for the most part, *a mere translation* from Craisson! With friends I have compared the works page after page, selected here and there at random, one reading the original Latin of Craisson, and the other following in the *Elements* of Rev. Dr. Smith.

It is true that here and there Rev. Dr. Smith has made applications of the general teaching of Canon Law to the Church in the United States. But as I have shown in this series of articles, his applications are not always trustworthy. It is also true that occasionally amongst the many Canonists quoted in foot-notes in the *Elements*, one finds mention of an author not quoted by Craisson, but this can scarcely entitle Rev. Dr. Smith to the *authorship* of the *Elements*.

PASCHAL COMMUNION IN THE UNITED STATES.

VIII. On page 386 of his *Elements*, Rev. Dr. Smith teaches:

"In the United States the faithful can make their Paschal Communion almost "everywhere, We just said *almost* everywhere; that is, except in certain "parishes of California. . . . The faithful . . . of these parishes must "receive their paschal Communion in their parish churches."

In proof of this obligation to receive Paschal Communion in the Parish Churches, he adduces the sixteenth Decree of the First Provincial Council of San Francisco, as quoted by Father Konings. This obligation, however, exists not only for "certain parishes of *California*," but for the whole of the Province of San Francisco, which includes not only California, but also Nevada and all the territory east to the Colorado River. This is proved by No. 17, page 14, and No. 17, page 20 of the First Provincial Council of San Francisco, as also from the Roman approbation, pp. 32-36, ibidem. Moreover, it is obligatory upon the faithful of the Diocese of Cleveland to receive their Paschal Communion in their Parish Church. This is shown by No. 1, of official circular No. II., issued by the illustrious Lord Bishop of the Diocese on the Feast of St. Cecilia, 1876.

THE TRIDENTINE DECREE TAMETSI

IN THE UNITED STATES.

IX. On page 391 of the *Elements* we read:

"It is certain that the Tridentine Decree *Tametsi* is not promulgated in most "of the Dioceses throughout this country (and nowhere with us does it bind "heretics *sub pœna nullitatis*, nor Catholics contracting with them); wherefore "marriages with us contracted by the sole consent of the parties, without the "presence of the pastor or any other priest, or witnesses, are valid though "illicit."

In a foot-note the author refers to the teaching that the Decree is not promulgated "*in most* of the Dioceses throughout this country," by adding:

"In some parts of the United States the Decree *Tametsi* is in force. Thus, it is "observed, 1st, in *all* the Dioceses belonging to the two provinces of New "Orleans and San Francisco; 2d, in the Diocese of Vincennes; 3d, in the follow-"ing places of the Diocese of St. Louis: In the city of St. Louis, and in the "places called St. Genevieve, Florissant, and St. Charles: 4th, in the places "named Cahokia, Kaskaskia, and Prairie du Rocher, all three in the Diocese of "Alton. In the British possessions of North America the Decree *Tametsi* is "observed: 1st, in the Province of Quebec—namely in the Dioceses of Quebec, "Montreal, Three Rivers, St. Hyacinth, St. Germain of Rimouski and Sherbrooke, "not, however, in the Diocese of Ottawa; 2d, in the Province of St. Boniface."

Those who are aware of the practical importance of this question, and of the difficulties it involves, can scarcely be satisfied with this manner of treating it. It is not severity to say our times demand further treatment of this question in a work on Canon Law. The teaching as far as it relates to the Dioceses of St. Louis and Alton is incorrect. Moreover, the Decree *Tametsi* is of force in several Dioceses not mentioned by Dr. Smith. Reference to some Roman documents and other testimony may be found worthy of attention.

The Decree *Tametsi* of the Council of Trent reads:

"Although it is beyond a doubt that clandestine marriages entered into "with the free consent of the contracting parties, are valid, and real mar-"riages, as long as the Church has not annulled them. . . . All those "who attempt to contract matrimony otherwise than when the Pastor is "present, or other Priest with permission from the Pastor or from the Bishop, "and when two or three witnesses are present, the Holy Synod renders utterly "incapable of so contracting marriage, and declares that all marriages so con-"tracted are null and void, and by this present decree makes them null and "void. The Synod furthermore declares that this decree shall be of force in "each Parish thirty days after its first promulgation in the Parish." (1)

(1) Tametsi dubitandum non est clandestina matrimonia, libero contrahentium consensu facta, rata et vera esse matrimonia, quamdiu ecclesia ea irrita non fecit..... Qui aliter, quam præsente parocho, vel alio sacerdote, de ipsius parochi, seu ordinarii licentia, et duobus vel tribus testibus matrimonium contrahere attentabunt; eos sancta synodus ad sic contrahendum omnino inhabiles reddit: et hujusmodi contractus irritos, et nullos esse decernit, prout eos præsenti decreto irritos facit, et annullat..... Decernit insuper, ut hujusmodi decretum in unaquaque parochia suum robur post triginta dies habere incipiat a die primæ publicationis, in eadem parochia factæ, numerandos.
Con. Trid. Sess. 24, de Matrim. Cap. I.

Before the Council of Trent, marriage contracted without any witness of the contract was valid. But the Council of Trent enacted a law making marriage null and void, unless when contracted in the presence of the Pastor and two witnesses. This law, however, has no force unless where validly promulgated. It is admitted that the valid promulgation of this Decree can be made only by one possessed of supreme jurisdiction *in foro externo*, namely, by the Bishop, or his Superior. (2). Thus the promulgation of this Decree made by missionaries in the Province of Oregon was declared null by the Holy See. (3) Moreover, even Bishops cannot *ex potestate ordinaria* validly promulgate this Decree outside of Canonical Parishes. The following fact proves this: In the year 1840 the Bishop of Kingston, Canada, attempted to promulgate the Decree *Tametsi* in his diocese in which Canonical Parishes had not been erected, and for a time it was claimed that the Decree was of force. But the Bishops of the Province assembled in council at Quebec in the year 1852 expressed doubts as to the validity of the promulgation, as it had been made where no Canonical Parishes existed. They consulted Rome. The answer received from the Propaganda declared that the promulgation of this Decree outside Canonical Parishes *can not be valid*; and ever since, in said Diocese of Kingston, the Decree *Tametsi* has been considered as *not* of force. (4)

This teaching is also advanced by Cardinal de Lugo. Speaking of the obligation of the Decree *Tametsi* he says:

"The obligation never commenced in places *where there was no parish* in "which to promulgate the Decree." (5)

Again, the illustrious Feije teaches the same, saying:

"We must hold that matrimony contracted without the Priest or witnesses "in *a place where there is no Parish*, is valid. . . . In such places the "Decree *is never to be published.*" (6)

St. Alphonsus also advances this doctrine, saying that marriage celebrated without the Pastor is valid, "because *there is no Parish there*, or because the "promulgation of the Tridentine Decree, although once made, does not continue, "for when the Parish is abolished, the promulgation is also abolished." (7)

Perrone holds the same teaching. Furthermore a Roman decision places this matter beyond dispute. The Bishop of Quebec, Mgr. Signay, proposed

(2) Konings Theol. Mor. vol 2, p. 266, No. 1606. c. Editio 3a.

(3) Konings. vol. 2, p. 269.

(4) Konings. vol 2, p. 270. Nota 2.

(5) Non extante parochia, in qua publicatio fiat, nunquam incœpit obligatio. De Lugo Resp. Mor. L. I. Dub. 36, Tom. 8. p. 59. Ed. Paris, 1869.

(6) In.....casu in quo *parochialitatis* ratio non existit, validum dicendum est matrimonium sine sacerdote et testibus contractum..... Adeo hoc verum esse opinamur, ut in ejusmodi loco ne publicatio quidem ipsa (decreti) unquam sit facienda. Feije, De Imp. N. 335.

(7) Quodsi non possit in aliquo oppido haberi pastor aut alius gerens ejus vices, tunc validum est matrimonium initum cum testibus sine parocho et probabile id putant Salmanticenses propter quamdam declarationem Clementis VIII., quia tunc vel non adest ibi parochia vel ibi non durat promulgatio Tridentini, quamvis facta fuerit, destructa enim parochia censetur destructa promulgatio quoad ejus valorem. Liguori, Opera Om. No. 1079, de Imped.Matri. vol.6, p. 747. Ed. Tur.

the following doubt to the Holy See: "Is the marriage of two Catholics "contracted by themselves *alone, without any witness*, valid?" To this the Sacred Congregation of the Inquisition responded, Nov. 17, 1835: "Such "marriage is valid for those subjects of the Diocese of Quebec, who are "under the charge of missionaries. For the Sacred Congregation of the "Propaganda in the year 1820 declared the Decree *Tametsi* of the Council of "Trent does not admit of publication for those inhabitants of the Diocese of "Quebec who are under the charge of missionaries only, as long as they are "under such charge. From these words it is evident that said inhabitants "can contract matrimony without the presence of the Pastor, or of any wit-"nesses. But we must hold the contrary of those inhabitants who reside in "places in which Parishes have been established; for they are by no means "to be considered as exempt from the law of the Tridentine Decree." (8) This argument is found in Father Konings' Compendium of Moral Theology in the places quoted above. He also advances the argument that for the valid promulgation of the Decree *Tametsi* nothing which the law considers *substantially* necessary, ought to be wanting; this law expressly requires the existence of *a Canonical Pastor* and *a Canonical Parish*.. Without these the law *per se* has no meaning, and can have no binding force.

Hence the teachings of Canonists, as well as various Roman Decrees, establish that *Bishops* can not validly promulgate the Decree *Tametsi* of Trent unless in Canonical Parishes. As we have seen in a previous article, Bishops in the United States have power to canonically erect Parishes. But only in places where they have exercised this power, and actually erected Canonical Parishes, can they validly promulgate the Decree *Tametsi*. We have also seen, in another previous article, that in the United States there are no Canonical Parishes. Wherefore *in the present ecclesiastical status* no *Bishop* can *ex potestate ordinaria* validly promulgate the Decree *Tametsi* anywhere in the United States.

Yet the Decree *Tametsi* has been validly promulgated, and is of force today, in the Provinces of San Francisco and New Orleans, as also in the Dioceses of St. Louis, St. Joseph, Vincennes, Alton, Peoria and Chicago.

In the year 1861, the illustrious Archbishop of San Francisco, submitted the following doubts to the Sacred Congregation of the Holy office:

"I. Must it be held that the Decree of the Council of Trent, chapter 1, "sess. 21, *de Reformatione matrimonii* is to be considered as promulgated in all "parts of the Diocese of San Francisco?

"II. If not, must it be held that said Decree is to be considered as pro-

(8) Matrimonium duorum Catholicorum inter se *solos* contractum absque ullo teste, validumne est? Validum est pro iis Diœcesis Quebecencis incolis, qui missionariis utuntur. Sacra enim Congregatio de Propaganda Fide, anno 1820 decrevit: "pro incolis diœcesis Quebecensis, qui missionariis tantum et donec utuntur, non esse locum decreto Concilii Tridentini *Tametsi*, nullo habito respectu majoris vel minoris distantiæ." Quibus ex verbis patet incolas praedictos matrimonia inire posse nec Parocho adstante, nec testibus ullis. Secus vero de iis incolis affirmandum est qui in locis habitant ubi sunt parochiae constitutae; illi enim nullo modo a lege Tridentini Decreti immunes haberi possunt.

" mulgated in churches lately established in places settled by Catholics only " during the last few years?

" III. If not, must said Decree be considered as promulgated in the " ancient Parishes?"

On the 15th of May, 1861, the most eminent Inquisitors-General responded as follows:

" As to the first doubt the answer is *affirmative*; as to the second and " third, our answer is contained in our response to the first." (9)

These decisions were applied to the Diocese of Monterey and Los Angeles on the 5th of December, 1861, and on the first day of July, 1863, were applied to the Vicariate Apostolic of Marysville or to the Diocese of Grass Valley; (10) in other words Rome has declared that the Decree *Tametsi* is of force *in all parts* of the Province of San Francisco.

Last December I submitted to his Grace Mgr. Alemany, the Archbishop of San Francisco, the reasons given above as against the validity of any promulgation of the Decree made by *Bishops*. The Archbishop graciously favored me with the following reply:

"San Francisco, January 14th, 1878.

"Rev. Dear Sir:

" After receiving your esteemed favor of the 28th ulto., I sent you a copy " of our Provincial Council, which may be of some use to you, as it contains " decisions from the Holy See regarding the validity of marriages in Cali- " fornia, which, no doubt, affect all the territory formerly known as Upper " California and extending east as far as the Colorado River. The reasons you " give tending to show that the Decree *Tametsi* might not be in force in Cali- " fornia, were mainly the reasons that I presented to the Holy See before the " decisions; but the Holy See considered the law of the Council of Trent " binding not only in the mission churches established by the old Spanish " Mexicans, but also in all other places which came into being since that " time; and its main reason, I suppose, was that the decree had been pub- " lished in Guadalajara to which diocese our California belonged, and that " the Spanish and Mexican missionaries had always acted on the validity of " the decree. And yet the portion of Utah Territory lying on the south-east " of the Colorado River, although, it would seem to me, affected by the same "reasons, has been declared free from the Decree *Tametsi* by the same Sacred " Congregation on account of not having churches, and scarcely any Catho- " lics. Of course God having given us Rome for our guide its decisions are

(9) "Quod spectat ad clandestinitatem matrimoniorum in California examinata fuit 1861, a S. Congregatione S. Officii analoga Archiepiscopi Sancti Francisci relatio, quæ cum dubiis sequentibus terminabatur. 1; An decretum Concilii Trid. Cap. 1. Sess. 21 de Ref. Matrimonii uti promulgatum haberi debeat in omnibus locis dioecesis S. Francisci. 2; Si negative, an laudatum decretum uti promulgatum haberi debeat in Ecclesiis nuper fundatis in locis qui solum paucis abhinc annis Christi—fideles habere coeperunt. 3; Si negative ad 2. An laudatum decretum uti promulgatum haberi debeat in antiquis Ecclesiis." EE. Inquisitores generales fer. 4. Maji 15. 1861 responderunt: "Ad I. dubium *affirmative*: ad 2, et 3. provisum in I." Acta at Decreta Concil Prov. S. Francisci I p. 66.

(10) Acta et Decreta Con. Prov. S. Fr. I p. 67.

"always cheerfully received . . . . . .
"Hoping that the above may be found satisfactory, I remain,
"Yours truly in Christo Fr.
"† J. S. ALEMANY, A. S. F."

Rev. P. F. Quigley, D. D., etc.

The decree of the Council of Trent, *Tametsi*, also is of force throughout the whole of the Province of New Orleans. In the year 1824, the Bishop of New Orleans submitted to the Holy See doubts as to whether the Decree *Tametsi* of Trent was of force in the Diocese of New Orleans, or Upper and Lower Louisiana, Florida, and all those districts formerly subject to the French and Spanish governments. Bishop Dubourg received in answer to his doubts a lengthy document from Rome, containing the following words:

"All these things having been duly examined, in a general session of the "Sacred Congregation of the Holy Roman and Universal Inquisition, held on "Thursday, the 9th of September, in the year 1824, in the Vatican Place, "in presence of our Most Holy Lord, Pope Leo XII., his Holiness, having "heard the opinions of the Most Eminent and Most Reverend Cardinals, "Inquisitors-General . . . . command that the answer be forwarded in "the following instruction. And first, as to the publication of the Tridentine "decree. From decisions of the Sacred Congregations, as well as from decrees "of the Roman Pontiffs themselves, *it must be held as certain that the promulga-"tion of the decree of the Council of Trent must be presumed as of force in "those places in which it can be proved that said decree was at any time observed*; "moreover, that it was once observed in those regions can be easily "proved," (11)

Then the document goes on to assign reasons which prove that the Decree *Tametsi* was at one time observed in the Diocese in question.

It also appears from the same Instruction that Rome knew there were no Canonical Parishes in the Diocese of New Orleans, in fact Rome abolished the Parish of St. Louis, in the city of New Orleans, the only Canonical Parish existing in the United States; and in the Instruction uses the word *missionarii*, whereas the word *parochi* would have been used, had they been under the impression that there were Canonical Parishes there.

This is the way the law is understood there, as I am assured by Very Rev. G. Raymond, V. G., writing to me on the part of his Grace the present Archbishop.

The Tridentine Decree also obtains in the Diocese of St. Louis. This is proved by the following from the Diocesan Statutes:

(11) Quibus omnibus relatis in Congregatione generali Sanctæ Romanæ et Universalis Inquisitionis habita in Palatio Vaticano, Feria V. die 9° Septembris, anno 1824, coram Sanctissimo Domino Leone Papa XII., Sanctitas Sua, auditis Emorum. et Revmorum. Cardinalium generalium Inquisitorum suffragiis.....respondendum jussit sequenti instructione. Ac 1° quoad Tridentini decreti publicationem: Jam pro firmo teneri debet tum ex Sacrarum Congregationum resolutionibus, tum ex eorumdem Romanorum Pontificum decretis, ibi præsumendam eam esse ubi constat decretum illud fuisse aliquo tempore, tanquam decretum Concilii observatum; porro observatum fuisse iis in regionibus facile ostendi potest, etc. Vide Appendicem.

"Let priests bear in mind, and take care to observe, what was recom-
" mended in the first Council of Baltimore concerning the Sacrament of
" Matrimony. Let them also remember what we signified to all the pastors
" of the Diocese in our Encyclical Letters, whilst we discharged the duties of
" Coadjutor Bishop of New Orleans, viz:

" 'I. It was solemnly declared by Pope Leo XII, on the 9th day of Sep-
" tember, 1824, that the discipline and decree of the Council of Trent con-
" cerning clandestine marriages is in force in this Diocese, and the impedi-
" ment of clandestinity exists here; and therefore marriages contracted
" without the presence of the priest and two witnesses are null and void.'" (12)

This law is also referred to in the Diocesan Synod of 1850, No. 17. (13)

Again in his Pastoral Letter of Sept. 1st, 1850, Archbishop Kenrick teaches:

" Now, brethren, we must remind you that agreeably to the law of the
" Council of Trent, in force in this Diocese, every marriage in which both
" parties are Catholic, to be valid, must be celebrated in the presence of the
" priest of the parish where the parties reside, or should they reside in differ-
" ent parishes, in the presence of the pastor of either parish. This is invari-
" ably the case when there is a resident priest in any parish or district of this
" Diocese, so that the neglect to observe this formality invalidates the mar-
" riage."

The territory now comprised in the Diocese of St. Joseph, was, in 1824, a part of the Diocese of New Orleans, wherefore the Decree *Tametsi* is of force also in the Diocese of St. Joseph.

In the year 1840 Mgr. De La Hailandiere asked the Holy See to extend the law of Trent on clandestinity of marriages to the whole of the Diocese of Vincennes. On the 10th of January, 1841, Pope Gregory XIV. did extend the law to said Diocese, also extended the declaration of Pope Benedict XIV. regarding mixed marriages and marriages of non-Catholics in Holland and Belgium. (14)

(12) Quæ de Sacram. Matrim. in I. Concil. Balt. sacerdotibus commendata fuerunt, præ oculis habeant atque servare studeant. Meminerint etiam quæ per litteras nostras encyclicas omnibus dioecesis pastoribus significavimus, dum officio Neo-Aurel. Epis. coadjutoris fungeremur, scilicet: 1° Solemniter declaratum fuisse a Leone PP. XII. Fer. 5, 9 Sept. 1824, disciplinam et decretum Conc. Trid. de Matrimoniis clandestinis in hac dioecesi vigere et impendimentum clandestinitatis subsistere; ideoque Matrimonia sine præsentia sacerdotis et duorum testium celebrata, nulla et irrita esse. Statuta Dioecesis S. Ludovici, promulgata ab Illmo ac Revmo D. Josepho Rosati. Apr. 1839. Decretum XIV.

(13) Innovantes decretum 14, primæ synodi S. Ludovici, mense April. in 1839 habitæ de matrim. sacram. sacerdotibus injungimus quæ inibi habentur semper præ oculis haberi in administratione hujus Sacramenti, nisi in quantum, per præsens hoc decretum aliter fuerit statutum, de proclamationibus mixtis etiam matrimoniis præmittendis.

Statuta lata ab Illmo. Archiep. Kenrick, in Synodo Dioecesana, 25 Aug.—1st Sep. 1850.

(14) Beatissime Pater: Coelestinus de la Hailandiere, Episcopus Vincennensis Beatitudini Vestræ humiliter exponet disciplinam Concilii Tridentini circa matrimonia inductam fuisse in civitatem Vincennensem et in pauca alia loca a Gallis qui prima illa incoluerunt, et deinceps servatam fuisse ab eorum descendentibus in iisdem locis; sed quum processu temporis reliquae Dioecesis partes quae a Catholicis ex Statibus Unitis vel Hibernia et Anglia advenientibus inhabitatae fuerint, disciplina praedicta servata non semper fuit in novis istis coloniis quae nunc majorem dioecesis partem constituunt. Episcopus arbitratur disciplinam Concilii Tridentini vigere quidem in civitate Vincennes aliisque antiquis Gallorum

The Decree is of force also in the Dioceses of Alton, Peoria and Chicago, for at the time that Rome declared the Decree binding throughout the whole Diocese of New Orleans, the present State of Illinois, containing said three Dioceses, was included in the Diocese of New Orleans. In proof I offer the following letter graciously written me by the illustrious Bishop Ryan, Coadjutor Bishop of St. Louis, in answer to my enquiries on this point:

"ST. LOUIS, MO., June 22, 1878.

"REV. DEAR DOCTOR:

"In the year mentioned (1824) the Diocese of New Orleans comprised "Upper and Lower Louisiana—the former embracing with other territory the "present State of Illinois. . . . . .

"Yours faithfully in Christ,

"† P. J. RYAN, C. Bp."

"Rev. P. F. Quigley, D. D."

These documents unquestionably establish the existence of the Tridentine law on marriage in the whole of the Provinces of San Fancisco and New Orleans, as also througout *the whole* of the Dioceses of St. Louis, (and not in certain parts only of this Diocese, as Rev. D. Smith, quoting Father Konings, writes), Vincennes, Alton, Peoria and Chicago. To sum up:

I. Bishops can not *ex potestate ordinaria* validly promulgate the Tridentine Decree *Tametsi* excepting in Canonical Parishes.

II. Rome has declared this Decree of force in the Province of San Francisco, as also in all the territory comprised in the Diocese of New Orleans in the year 1824.

III. There is no contradiction between these two conclusions if we hold that the promulgation made in this country was of *papal*, not of *episcopal* power.

According to my information at this writing the Province of San Francisco, in the year 1861, comprised the present States of California and Nevada, and all the territory east to the Rio Colorado; and in the year 1824, the Diocese of New Orleans comprised the present Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Missouri and Illinois. Wherefore the Decree *Tametsi*

coloniis, sed dubitat utrum vigeat in novis Americanorum, Hibernorum et Anglorum coloniis suae dioecesis; optaret autem unam eandemque disciplinam in sua universa dioecesi sequi, ideoque a Beatitudine Vestra petit ut pateat disciplinam eandem in tota dioecesi Vincennensi sequendam esse atque benigne extendat ad dioecesim praedictam concessiones factas a Benedictio XIV. Belgio, et deinceps a Leone XII. dioecesibus Neo Aurelianensi et S. Ludovi. Quare.

Ex audentia Ssmi. habita die 10, Januarii 1841, Ssmus. Dominus Noster Gregorius, Divina Providentia PP. XVI. referente me infrascripto Sacrae Congregationis de Propaganda Fide Secretario, mature perpensis expositis, benigne annuit pro gratia juxta petita necnon extendit ad totam dioecesem Vincennensem declarationem S. M. Benedicti, P. P. XIV., datam 4. Novr. 1741, super dubiis respicientibus matrimonia in Hollandia et Belgio contracta et contrahenda, contrariis quibuscumque non obstantibus.

Datum Romae ex aed. dic. Sac. Cong. die et anno quibus supra.

Gratis sine ulla omnino solutione, quocumque titulo.

(Locus Sigilli.) J. ARCH. EDESSEN.

Illmo. RRmo.

COELESTINO DE LA HAILANDIERE.

EPISCOPI VINCENNENSI

is of force in the Dioceses of San Francisco, Grass Valley, Los Angeles and Monterey, St. Augustine, Mobile, New Orleans, Galveston, San Antonio, Brownsville, Natchez, Natchitoches, Little Rock, St. Louis, St. Joseph, Alton, Peoria and Chicago, in all seventeen Dioceses.

As to marriages contracted clandestinely in California prior to the year 1861, the Holy See benignly granted the Ordinaries the power *sanandi in radice.* (15)

Even when both parties contracting marriage are Catholic there is an exception from the law of Trent; namely, when in certain districts, owing to peculiar circumstances, it is impossible to secure the presence of the pastor. In the year 1793 Pope Pius VI. declared in his Epistle to the Bishop of Lucon that the Sacred Congregation of the Council had repeatedly so decided. According to a later decision of the Congregation of the Inquisition, as Ballerini shows, this exception exists when parties wishing to contract marriage would be obliged to wait for the space of *a month* before they could secure the attendance of their pastor, or another priest representing him. However, it is expressly specified that in such a case there be two witnesses of the marriage. (16)

Again, the Holy See decided that this teaching applies to similar cases in California, providing the marriage be contracted in presence of two witnesses. (17)

Diocesan statutes show that this declaration applies to the Diocese of St. Louis. (18)

Father Konings shows that the Holy See also decided, in 1824, that slaves within the Diocese of New Orleans could validly marry in the absence of the pastor, providing one witness were present. (19)

To prevent an attack from certain quarters it may be well, before closing, to refer to this law of Trent in as far as it relates to marriages of non-Catholics, as also to mixed marriages.

The Catholic teaching is that the law of Trent, under discussion, does not affect the marriages of non-Catholics. Furthermore, the teaching is, this law does not affect the marriages of those who may have apostatized from the Catholic Church. Pope Pius VII. advances this teaching in his letters to Dr. Charles Dalberg, Archbishop of Meinz. (20)

Pope Benedict XIV. writes that the Tridentine Decree does not invalidate the conjugal unions of non-Catholics who are not married by the priest, and

(15) Con. Prov. S. Francisci I. p. 66.

(16) Ballerini Gury. vol. 2. de Matr. notes under No. 840.

(17) Con. Prov. S. Francisci I. pp. 66, 67.

(18) Declaratum fuisse a S. Pont. Matrimonia celebrata inter duas partes Catholicas sine præsentia sacerdotis, in iis locis ubi sacerdos habitualiter residere non solet, etiamsi regulariter a missionario visitentur, et etiamsi non longe distanta loco ubi sacerdos residet, valida esse, quamvis illicita forent si facile sacerdotem habere possent. Tres proclamationes matrimonii inter Catholicos sunt præmittendæ. Quoad Matrimonia mixta meminerint sacerdotes proclamationes non esse faciendas. Stat. Diœces. S. Ludovici promulgata ab Illmo. ac Revmo. D. Jos. Rosati. Aprl. 1839..

(19) Compend. Theol. Moral, vol. 2, p. 269, not. 5.

(20) Vide Ballerini Gury. vol. 2. pp. 593, 594, 2d. Ed.

he observes that although he had filled divers positions in which he must have learned the law upon this matter, such as Secretary of the Congregation of the Interpreters of the Council of Trent, Consultor of the Supreme Inquisition, etc., he never found reason to show that the Decree *Tametsi* affects the marriages of non-Catholics. (21)

Also Archbishop Kenrick teaches that the Tridentine Decree does not affect the marriages of non-Catholics. (22)

But aside from this teaching of standard authors, Pope Benedict XIV, has officially declared that the Tridentine Decree did not affect either the marriages of non-Catholics, or mixed marriages in Holland and Belgium where the Decree *Tametsi* had been validly promulgated. This is not regarded as an *exemption, or dispensation from the law,* but merely as an authoritative declaration as to what the law is in these cases. (23)

The Provincial Council of San Francisco shows this declaration was applied to California in the year 1857. (24)

The Instruction of Pope Leo XII. sent to Bishop Dubourg in 1824, shows that the same declaration applies to the Province of New Orleans.

It is also certain that this declaration applies to the Diocese of St. Louis. (25)

In brief, the declaration of Pope Benedict XIV. regarding marriages in Holland and Belgium, applies to all places where the Decree *Tametsi* is of force.

This series of articles has now drawn to a close. Though not free from defects,—for they were written during scraps of hours of recreation—they will probably serve to call attention to *some* of the errors and defects noticed in Rev. Dr. Smith's *Elements of Ecclesiastical Law.*

(21) Nos quidem cum plurium annorum spatio, antequam ad majores dignitates ascenderemus munera tum secretarii Congregationis Concilii Tridentini Interpretum, tum Doctoris in Decretis in Pœnitentiariæ Apostolicæ officio, tum etiam Consultoris Supremæ Inquisitionis exercuimus; sed nunquam opinioni illi acquiescere potuimus per quam prædicta (Hæreticorum) matrimonia nulla judicantur. Bened. XIV. de Synd. Lib. 6. Cap. 6. No. 4. Ballerini Gury. vol. 1, de Matrim. pp. 593, 595. 2d. Ed.

(22) Kenrick, Theol. Mor. vol. 2, p. 329. Ed. Mechl. 1861,

(23) Vide Instructionem Benedicti XIV. apud Acta et Decreta. Con. Plen. Balt. II. p. 314

(24) Acta et decreta, Con. Prov. S. Francisci, pp. 67-68.

(25) Ab Eodem Leone XII. extensum fuisse ad totam, qua longe patebat (anno 1824) Neo-Aurel. diocesim nimirum ad superiorem et inferiorem Louisianam, ac ad Floridas cæterasque partes, olim Gallorum vel Hispanorum ditioni subjectas, declarationem et concessionem Benedicti XIV. circa matrim. pro Hollandia et Belgio. Ex præfatæ declarationis et concessionis Bened. XIV. extensione ad nostram diœcesim sequi, Matrim. mixta, inter partem acatholicam baptizatam et catholicam celebrata, sine præsentia sacerdotis, etiam in locis ubi habetur copia sacerdotis, et sacerdos residere solet, valida esse, licet illicita; item Matrim. inter duas partes acatholicas in iisdem locis, ubi habetur copia sacordotis, atque in aliis quibuscumque celebrata, valida esse, ita ut si ad fidem convertantur, vel ad bonam frugem revertantur, Matrim. praedicta non egeant rehabilitatione. Stat. Dioec. S. Ludovici. Promulgata ab Illmo. ac Revmo. Jos. Rosati, Mense Apr. 1839.

APPENDIX.

DECRETUM

(De Matrimoniis Clandestinis)

FERIA V. 9. SEPTEMBRIS 1824.

In Congregatione Generali S. Romanae et Universalis Inquisitionis habita in Palatio Vaticano coram SSmo Dno Nro Leone Divina Providentia Papa XII. ac Emis et Rmis Dnis Cardinalibus Generalibus Inquisitoribus a S. Sede specialiter deputatis,

Relatae fuerunt Literae Episcopi Novae Aureliae ad S. Congnem de Propaganda Fide, datae sub die 4, Aprilis 1822, quibus exponit in Neo-Aureliana Provincia, perinde ac in caeteris Provinciis Foederate Americae, quotidie juxta civiles illarum Regionum leges, a judicibus, vel ab Acatholicis Ministris celebrari Matrimonia, inter quae non raro etiam mixta, seu Catholicos inter et Acatholicos, seque propterea gravissimis continuo vexari angustiis ob hujusmodi Matrimoniorum Clandestinitatem, ac legum jussa, ignorans quid consilii capiendum sit, cum unus tantum ex contrahentibus in se reversus, ac facti vel erroris poenitens, petit Ecclesiae reconciliari, vel ad Catholicam convertitur Fidem, renuente altero se subjicere Canonicis prescriptionibus exequendis. Quapropter ut a dubiis et anxietatibus circa Matrimonia praefata, nec non circa modum se gerendi cum Conjuge resipiscente aut converso, quantum fieri potest, et se liberet et Missionarios; enixe rogat, ut in tota qua longe patet Neo-Aurelianensi Dioecesi (nimirum in Superiori, ac Inferiori Lovisiana, ac in Floridis, caeterisque partibus olim Gallorum vel Hispanorum ditioni Subjectis) Sanctitas Sua declarare, atque statuere dignetur relate ad Matrimonia hujusmodi quod pro Hollandia et Foederato Belgio declaravit ac statuit Benedictus XIV.

SSmus itaque Dnus Noster Leo XII. re mature perpensa libratisque illarum Regionum circumstantiis, et auditis Emorum et Rmorum Cardinalium Generalium Inquisitorum Suffragiis, Episcopi Oratoris votis et precibus annuens, presenti Decreto extendit ad totam, ut supra, Neo-Aurelianensem Diocesim Declarationem, a S. M. Bened. XIV. datam die 4. Novembris 1741. super dubiis respicientibus Matrimonia in Hollandia et Belgio contracta, et contrahenda.

INSTRUCTIO.

Exposuerat S. Congregationi de Propaganda Fide in suis literis 4. Aprilis 1822, Episcopus Novae Aureliae in Foederata America:

1°. Antiquiores illarum Missionum Sacerdotes, a se consultos, in ea esse opinione quod Concilium Tridentinum numquam fuerit illic *solemniter* publicatum.

2°. E contra, ejus in Episcopatu Praedecessorem, in suis Instructionibus in quodam manuscripto Codice contentis, licet non declaret, pro facto tamen supponere, tempore Gallicae vel Hispanae dominationis, promulgatum fuisse Concilii Decretum. Hinc:

3°. Se plane nescire, quid agendum, cum in suae Dioecesos regionibus frequenter contingat, quin ob civiles quae ibi obtinent leges impediri id possit, a Judicibus vel Pseudoministris celebrari matrimonia mixta, et aliquoties etiam inter Catholicos, idque non solum ubi deest copia Sacerdotis, sed etiam ubi adest Parochus. Atque idcirco:—

4°. Si invalida declarentur ob clandestinitatem Matrimonia hujusmodi, gravissima inde in tota Neo-Aurelianensi Diocesi oritura incommoda, turbationes, et anxietates tum Catholicorum Fidelium, tum Episcopi, et Missionariorum, obveniente scilicet casu, quod alterutra tantum ex contrahentibus pars ad bonam frugem, vel ad fidem revertatur, perseverante altera in sua pervicacia, ac civilibus legibus freta, tam separationi obsistente, quam novi ad Tridentini formam Matrimonii celebrationi.

5°. Hisce autem incommodis avertendis, spiritualique tot Conjugum saluti consulendi nullum aliud sibi videri suppetere medium, nisi quod auctoritate Pontificia in ea Dioecesi dispensetur super Tridentino Clandestinitatis impedimento.

Quapropter enixe postulabat, ut pro Matromoniis, quae in illis Regionibus contrahuntur, Summus Pontifex statueret ac declararet quod statuerunt ac declararunt Bened. XIV. pro Hollandia et Belgio, Pius autem VI. et Pius VII. pro Gallia tempore schismatis. En ejus verba: "Certe publicatum fuerat Concilium in Hollandia tempore Hispanicae Dominationis: "cum vero in manus hereticorum transiit suprema auctoritas, sapientissimus "Pontifex Benidictus XIV. illi benigne *derogandum* in hac parte duxit. "Idem judicavere S. M. Pius VI. et Pius VII. pro matrimoniis in Gallia, "schismatis tempore contractis." Quidni speraremus eadem lenitate nobiscum usuram Ecclesiam, cum eadem rationum momenta in gratiam hujus regionis militent?

Quibus omnibus relatis in Congne Gnli S. Romanae et Universalis Inquisitionis habita in Palatio Vaticano Feria V. die 9 Septembris 1824. coram SSmo Dno Nro Leone Divina Providentia Papa XII., Sanctitas Sua, auditis Emorum et Rmorum Cardinalium Gnlium Inquisitorum suffragiis, extendendam censuit, prout ex hic adjuncto Extensionis Decreto ad totam Neo-Aurelianensem Dioecesim Declarationem Benedicti XIV. pro Matrimoniis in

Hollandia et Belgio; quoad cetera vero in eisdem Episcopi literis contenta, respondendum jussit sequenti Instructione.

Ac primo, quoad Tridentini Decreti publicationem: Jam pro firmo teneri debet, tum ex Sacrarum Congnum resolutionibus, tum ex eorumdem Romanorum Pontificum Decretis, ibi presumendam eam esse, ubi constat Decretum illud fuisse aliquo tempore tamquam decretum Concilii observatum. Porro observatum aliquando fuisse iis in regionibus, cum Gallorum vel Hispanorum subdebantur imperio, facile ostendi posset. Et quidem relate ad Hispanos: Adeo exploratum est, quanto Religionis studio Hispanorum Reges, Concilio et Apostolicae Sedi obsequentes, in ejusdem Concilii publicationem in omnibus eorum ditionibus faciendam incubuerint, ac quanta pariter sedulitate Conciliaria Decreta observari curarint Hispanarum ditionum antistites, ut nec vel minimum dubitari queat de ejusdem decreti in Hispanicis Americanis regionibus observantia. Neque pariter locus est de hoc dubitandi relate ad Provincias quae Gallorum dominio subjiciebantur. Constat enim, Galliarum Regibus adeo cordi fuisse clandestina submovere matrimonia, ut Ecclesiasticae legi subsidio venientes, observantiam Conciliaris decreti non solum regiis etiam Edictis indixerint, sed et inter leges recensuerint omnino servandas ubicumque eorum extendebatur imperium. Atque quoad Colonias: Quum ageretur anno 1764. sub Clemente XIII. de extendenda ad regiones Canadensem et Quebeccensem memorata Benedicti XIV. declaratione, monumentis in causa allatis demonstratum fuit, Tridentinum Clandestinitatis impedimentum illis in Coloniis tunc viguisse non secus ac in Gallia, ex quo inferendum, et in aliis quoque vigere quae partem nunc constituunt Neo-Aurelianensis Dioecesis. Accedit et defuncti Episcopi testimonium, qui, ut refert Orator, in suis Instructionibus pro facto supponit promulgatum ibi fuisse Tridentinum Decretum. Nec interest, quod non expresse id declaraverit: Supervacaneum namque duxit declarare, quod pro certo ac notorio tenebat.

Non valent autem neque Missionariorum, quos consuluit Episcopus, assertiones de non peracta *solemni* publicatione Concilii, neque execrandus ineundorum Matrimoniorum coram Judicibus vel hereticis Ministris abusus, ut inde inferri possit, non subsistere impedimentum Clandestinitatis. Ex eo enim, quod praefati Missionarii opinentur non fuisse *solemniter* publicatum Decretum, de quo agitur, non consequitur, eos inficiari, ipsum fuisse aliquo tempore observatum; ex observantia autem, ut supra monitum est, praesumitur publicatio. Caeterum pluris facienda est laudati defuncti Episcopi, quam dictorum Missionariorum auctoritas. Abusus vero contrahendi coram judicibus vel Pseudoministris, haudquaquam probat, legem non existere, vel non obligare; sed probat tantum, quod maxime dolendum est, tam perditos inveniri Catholicos, qui sacrilego ausu divinas aeque ac ecclesiasticas leges palam conculcare non erubescant.

Hinc apparet, quid de hujusmodi Matrimoniis sentiendum sit. Absurda autem, et mali exempli, foret generalis, quam exoptare videtur Episcopus, dispensatio super Clandestinitatis impedimento, extensive etiam ad Catholico-

rum Matrimonia. Neque ille gravate ferat eam ab Apostolica Sede denegari. Jam enim quoad Matrimonia Haereticorum inter se, vel cum Catholicis, seu mixta, quae praecipua sunt anxietatum ejus causa, ipse Episcopus et Missionarii ab omnibus extricantur et liberantur angustiis per extensionem Benedictinae Declarationis. Quoad vero Matrimonia Catholicorum, id est, inter utramque partem Catholicam, latere non debet Episcopum, denegatam fuisse dispensationem etiam Canadensibus et Quebeccensibus, licet ratione tum locorum, tum legum, tum religionis Dominantium, in similibus ac Neo-Aurelianenses, versarentur circumstantiis. Siquidem Feria V. die 29. Novembris 1764. proposito dubio: "*An praesens illarum Regionum* (Canadensis scilicet ac Quebeccensis) *conditio exigere videatur, ut S. Sedes generaliter dispenset ab observantia formae inductae a Concilio Tridentino?*" Responsum prodiit "*Negative.*"

Neque pro Catholicorum Matrimoniis ad rem faciunt laudatorum Pontificum declarationes, ac decreta pro Hollandia et Gallia. Ipse namque Bened. XIV. expresse declarat (de Syn. Dioec. lib. 6. cap. 6. § 13.) ea non comprehendi in suo pro Foederati Belgii Provinciis decreto. "Matrimonia, inquit, "Catholicorum in decreto non comprehensa facile intelliget quicumque "advertat, illud nominatim restrictum esse ad ea Matrimonia, quae in praefatis "regionibus vel inter duos contrahentes haereticos, vel inter unam partem "Catholicam, et alteram hereticam, contrahuntur." Reliqui autem duo Pontifices Pius VI. et Pius VII. haudquaquam pro Gallia *derogarunt* in hac parte Tridentino Concilio, sed tantum, et Episcopis concessere ad tempus facultatem dispensandi super Tridentini forma in Matrimoniis mixtis, et quoad Catholicos, declararunt casus, in quibus ex Ecclesiae mente cessare intelligitur ejusdem servandae formae obligatio, nempe tempore persecutionis, absente, vel latente legitimo Parocho, vel si difficile admodum foret ac periculosum ipsum adire; "*Quoniam,*" inquit Pius VI. in Instructione ad Episcopum Lucionensem data die 28. Maii 1792., "*complures ex istis Fidelibus non possunt* "*omnino Parochum legitimum habere, istorum profecto conjugia coram testibus, et* "*sine Parochi praesentia, si nihil aliud obstet, et valida, et licita erunt, ut saepe* "*saepius declaratum fuit a S. Congregatione Concilii Tridentini interprete.*" Quas Ecclesiastici Juris dispositiones nec ipse ignorat Episcopus. Scribit enim "*Si id eveniret* (quod scilicet contrahant Catholici vel inter se, vel cum "Acatholicis coram Judicibus, aut haereticis ministris) *solummodo in iis locis,* "*ubi deest copia Sacerdotis, facilius ex nota mente Ecclesiae solveretur difficultas:* "*sed frequenter etiam locum habet in iis, ubi adest Parochus.*" Hic itaque est casus, qui eum urget et vexat: sed casus, ad quem non extenduntur praefatae declarationes.

Verum, et quoad hujusmodi Catholicorum matrimonia hactenus contracta, providere volens summus Pontifex spirituali contrahentium saluti, una et Episcopum et Missionarios a sollicitudine qua fortasse afficiuntur, eximere, dummodo nullum aliud, praeter Clandestinitatis, obstet impedimentum, ea in radice sananda esse decrevit, atque Apostolica auctoritate sanat; quin opus sit

Conjuges ad novi consensus praestationem admittere, tribuens propterea Episcopo facultates in casu opportunas, et necessarias. Ad praecavenda autem jurgia, quae oriri hinc possent, ac ne alterutri, vel etiam utrique Conjugi ansa praebeatur attentandi Conjugii dissolutionem, curet Episcopus, ne iis Conjugibus denuntietur initi matrimonii invaliditas, antequam ad eorum notitiam pariter deducatur, et sanatio. Exquirat itaque secreto, prout fieri potest, accuratam horum Matrimoniorum notulam, et conjugum nomina, omniaque diligenter descripta cum adnotatione Pontificiae sanationis caute custodiantur, quemadmodum pro matrimoniis occultis, seu conscientiae praescribit Bened. XIV. in sua Constitutione "*Satis vobis*" (die 27. Novembris 1741.)

Postulabat denique idem Episcopus edoceri se, et Missionarios, quomodo, posita hujusmodi matrimoniorum invaliditate, se gerere debeant: "*Erga eos* "*qui post civile matrimonium jam consummatum, adhuc vivente Consorte, novum* "*cum alio conjugium coram Nobis* (inquit) *inire poscerent.*" En autem rationes, quae eum ancipitem tenent: "*Si id fiat* (prosequitur) *sine civili* "*repudio, Sacerdos se gravissimae poenae subjicit. Si requirat praevium repudium,* "*dato quod obtineri possit, morem illum Antichristianum auctoritate sua, aut potius* "*Ecclesiae sanctione consecrat. Verum aliunde quo jure potest huic se petitioni* "*negare, si revera prius Matrimonium nullum sit? Tunc enim ambae partes* "*vere solutae sunt, et, utpote catholicae, jus habent ad sacramenti receptionem.*"

Ad haec breviter respondetur. Si de matrimoniis Catholicorum hactenus contractis fit sermo, jam provisum per eorum sanationem, nec conjuges amplius resilire possunt, nec proinde ad novas cum aliis nuptias transire. Si vero sermo est de contrahendis: Confidit equidem Sanctitas Sua, futurum, ut in posterum Fideles, ab Episcopo et Missionariis edocti, juxta ea quae tradit Bened. XIV. in suis literis "*Redditae sunt nobis*" ad P. Paulum Simonem a S. Joseph datis 27. Septembris 1746., nullum scilicet a se contrahi matrimonium per eum, quem coram Magistratum civilem actum emittunt, ideoque conjugalem, quam interim inter se haberent, consuetudinem gravi culpa non carituram, ea qua debent docilitate obtemperaturi sint Ecclesiae legibus, ac Pastorum exhortationibus. Verum si tamen casus contingeret conjugalis consuetudinis post memoratum actum civilem, ante Matrimonii coram sacerdote celebrationem, sciat Episcopus, non in sola ejus Dioecesi id evenire, sed ubicumque viget lex contractus civilis; quia nullibi desunt, qui vel ignorantia, vel pravitate ea lege abutantur. In eodem ergo discrimine ac ipse, versari possunt et aliarum regionum Pastores.

Primo itaque curent Episcopus et Missionarii utramque partem inducere ad Catholice inter se contrahendum. Si vero utraque pars in hoc convenit, ut suam quaeque sibi vindicet libertatem, vel etiam, si una tantum id exposceret, renuente altera, indicenda est eis separatio, et neutra admitti debet ad sacramenta, nisi separatione peracta, ut praescribitur de publicis Concubinariis. Poscenti autem novum cum alio inire matrimonium suggerere, quod et sibi prius consulat, et ipsi Parocho, agendo scilicet ut et sibi civilis reddatur libertas, et Parocho nihil sit inde mali obventurum; non id esset civilis

repudii morem approbare, dummodo rite instruatur postulans, id non ideo fieri, ut solvatur matrimoniale vinculum, quia nullo jam vinculo detinetur, sed tantum ut se ac Parochum a legalibus poenis, civilibusque vexationibus redimat. Eodem sensu, ac modo, quo toleratur primus actus civilis, expressio nempe consensus coram civili Magistratu, tolerari potest et secundus, ut nimirum se partes eximant ab effectibus primi. Hisce vero penes Gubernium peragendis non se immiscere debent Missionarii. Qui nubere exposcit, ipse negotium suum agat.

Caeterum quod idem Bened. XIV. in laudatis literis docendos monet Fideles, sibi opportune aptent et Pastores, scilicet "*Si regionis consuetudini, "et terreni Principis sanctionibus obtemperare coguntur, faciant quidem, sed "Religione salva, potioresque ducant sanctissimas Ecclesiae leges, quibus matri- "monia constringuntur.*"

NICOLAUS SOLDINI S. Romae et Unlis Inqnis Nots.

IMPRIMATUR

NEO-AURELIÆ, die 24a Aprilis 1878.

†NAPOLEO JOSEPHUS, *Archiepiscopus Neo-Aurelianensis.*

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SUPPLEMENT.

The following, concerning "Points in Canon Law," is taken from the American Catholic Quarterly Review of October, 1878.

"This, as indicated on the title-page, is a revised edition of some articles which appeared originally in the Cleveland *Catholic Universe*. The Rev. Dr. Quigley has studied carefully the matter of which he treats, and writes forcibly and convincingly. We think he has succeeded in proving all the chief points that Dr. Smith's book has given him occasion to discuss. In some few places, however, a somewhat milder tone would not have interfered in the least with the strength of his argument. Some of the questions that he discusses and the errors that he impugns are no light matter. For example, according to Dr. Smith's theory, neither our bishops nor our priests are bound by the decrees of the Baltimore Councils. Our bishops may obey or disregard them, as may suit their pleasure or convenience; and priests are always free to appeal to Rome against any bishop who should attempt to enforce the Baltimore decrees. This is going too far, and is scarcely respectful to the Holy See, which has commanded that "these decrees be observed inviolably by all whom they concern," viz., by the bishops and priests of the American church. Is this a mere empty formula, meaning nothing; or is it the sincere expression of the will of an authority that we regard as supreme? Or is Rome in the habit of giving "commands" which bishops may disobey as they please, and which if they enforce they are in danger of being called to account and perhaps rebuked for it? Yet nothing short of this is contained in Dr. Smith's fanciful theory. Rome has always desired, and earnestly desired, that the Baltimore decrees should be observed; and recent indications point unmistakably to the fact that she now intends to take positive steps to enforce their observance. This will be a practical condemnation from the highest source of this novel opinion, which Dr. Smith seeks to introduce into our schools. We never heard the opinion expressed before, save by some priest who was restive under justly incurred censure. That a drowning man should grasp at this pitiful straw is intelligible enough, but that a grave professor and priest in good standing should entertain this error and recommend it to the belief of others is something rather strange.

Rev. Dr. Quigley enters into a good deal of learned and interesting discussion on several other subjects, such as simple removal from pastoral charge, suspension *ex informata conscientia*, the law of the "Imprimatur," and other matters, amongst which is the Tridentine decree "Tametsi," and which on his showing applies to seventeen dioceses within the territory of the United States. In other words, there are full seventeen of our dioceses in which the legislation of the Fathers of Trent against "clandestine" marriages holds good to the same extent that it does in Catholic Europe. Dr. Quigley holds that the laws of the Index apply here as much as they do in the Old World, and supports his opinion with plausible arguments. Its spirit unquestionably, if not its letter, is as binding in Baltimore or New York as within the precincts of the Holy City.

The author maintains another position of which we are not quite so sure, though we do not care to give it a positive denial. He thinks that the American bishops, if they think it expedient, can introduce the parochial system into the country, *i. e.*, change the pastors of churches from *amovibles*, as they are, into *parochos perpetuos*. We have some doubts about this. It is certain that resident bishops, that is, who take their name from the See in which they live, and even Vicars Apostolic, may in missionary countries be really and truly ordinaries. But we are not sure that they can, therefore, *ex potestate ordinaria*, introduce the parochial system where it never existed before. The example of England, where, on the restoration of the hierarchy, the co-operation of the Holy See was thought necessary, and was consequently invoked and obtained, would tend to prove the contrary. What we have stated is based on the "Council of Westminster," and the documents contained in it. The change would be so important that on the score of propriety alone the Holy See should be consulted. What the author alleges about the erection of parishes in Canada by Episcopal authority, will depend a good deal on two questions: First, is Canada a missionary country? And, secondly, supposing it to be such, was the erection of these parishes a recent event, or did it take place soon after it was colonized by the French? If Canada be a "missionary" country, its ecclesiastical relations with Rome will be found to be con-

ducted through the channel of the Sacred Congregation of Propaganda Fide. If not, they will be through other Congregations. To ascertain these facts would solve the difficulty, or rather would reduce the argument to its true value.

It might be further remarked, for the sake of perfect accuracy, though the errror is not one of much importance, that the "Instruction" transmitted to the Bishop of New Orleans by the Sacred Congregation of Propaganda in the year 1824, is not now published for the first time. It was printed four years ago by Rev. Dr. Smith, in his *Notes on the Second Plenary Council of Baltimore*. New York, 1874, (Appendix, p. 452).

The pamphlet of Dr. Quigley will do good amongst our students of Canon Law; for these discussions, when conducted in the proper spirit, can only tend to elicit more fully the truth. And we have no doubt that Dr. Smith himself will be glad to see others entering the field, in which he justly claims to be a pioneer, even though their work consist mainly in correcting the errors he may have committed on his first voyage of discovery.

I thank the AMERICAN CATHOLIC QUARTERLY REVIEW, most cordially, for kindly pointing out the defects in my statement of the facts in the case of the erection of Canonical Parishes in Canada (POINTS IN CANON LAW, p. 30). To supply those defects I now ask to state, on the authority of the present gracious Archbishop of Quebec, Mgr. Taschereau, that:

1. Benefices *perpetual* are most rare in Canada. In the whole Province of Quebec there is but one such benefice, viz., that erected in the parish of Our Lady Immaculate, in the Cathedral, September 15th, A. D. 1664, by Mgr. Francis de Laval, then Vicar Apostolic of all Canada, and, later, the first Bishop of Quebec.

The records show that Mgr. de Laval assented to the petition for the above erection, and spoke thus:

"Itaque sacrorum canonum, conciliorumque decretis inherentes, illa qua fungimur auctoritate, ecclesiam Immaculatae Conceptionis B. V. M. Urbis Quebecensis, in perpetuum parochiae titulum et beneficium eregimus."

2. No other Parishes in Canada are *perpetual* benefices. The Pastors are *amovibiles ad nutum episcopi*, and are constituted solely by the *ordinary* power of Bishops. (The Pastors in Montreal are *amovibiles non solum ad nutum episcopi, sed etiam Seminarii, ad instar parochiarum regularium, juxta quamdam bullam Benedicti XIV*).

3. The Bishops of Canada have believed that the power of erecting Canonical Parishes is comprised within their *ordinary* power, and have always exercised it without ever making any mention of any Apostolic Indult.

4. Canada has always been subject to the Propaganda, and is now subject to the same Sacred Congregation. All her ecclesiastical affairs with the Holy See are conducted through the Propaganda.

From this it follows that the Canadian Bishops erecting Canonical Parishes solely by their *ordinary* power, afford a precedent for the United States Bishops to erect Canonical Parishes *vi potestatis ordinariae*.

Regarding my claim that my publication of the Roman *Instruction* to New Orleans was the first appearance of that document in any book or pamphlet published in the United States, I ask to state in qualification of my claim, that my publishing it was its first *legitimate* appearance in any book or pamphlet published in the United States.

Accepting the doctrine advanced in POINTS IN CANON LAW, pp. 33-36, on the law of the *imprimatur* necessitates the repudiation of Rev. Dr. Smith's *Notes on the Second Plenary Council of Baltimore*, as an illegitimate and forbidden publication, for it was published without the *imprimatur*.

Also, I ask to state that Vicar General Raymond, of New Orleans, at my most urgent request, had the document in question published in circular form, April 28th, 1878.

P. F. Q.

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